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Professional Notes.

AN announcement was issued from No. 10, Downing Street, on September 26th, that the King had been pleased to approve that the dignity of a Baronetcy of the United Kingdom be conferred upon Alderman Sir Maurice Jenks on the occasion of his retirement from the office of Lord Mayor of London. At the same time it was intimated that the honour of Knighthood had been conferred upon the two retiring Sheriffs of London, Mr. Alderman Percy Walter Greenaway and Mr. George Henry Wilkinson. Sir Maurice Jenks, who received the honour of Knighthood in 1931, has been for 22 years a member of the Corporation. He is the senior partner of the firm of Messrs. Maurice Jenks, Percival & Co., Chartered Accountants, and is discharging the duties of Lord Mayor of London with assiduity and distinction.

The recent death of Sir Charles John Stewart, K.B.E., has removed a warm and understanding friend of our profession. A man of versatile attainments, he filled successively the offices of Senior Official Receiver in Companies (Winding up) (1890-97), Clerk to the London County Council (1897-1900), Chairman of S. Allsopp and Sons, Limited (1900-1907), and Public Trustee (1907-1919). In the last named office Sir Charles Stewart was highly successful. In fact, he can be said to have made the department, notwithstanding the absence of professional encouragement. The creation of the office of Public Trustee has called into being the Trustee and Executor Departments of banks and insurance companies. It has also had an unforeseen benefit in a direction hardly looked for. It has caused the employment of private professional trustees with suitable remuneration for their services, thus obviating the slipshod methods of unremunerated relatives and friends, who often took little if any interest in the efficient discharge of their duties.

Always active, Sir Charles Stewart never failed to maintain a wide outlook. His energies during the war were boundless, although he lost both his sons, together with a son-in-law, on active service. His great experience was always at the service of his friends, and to those who knew him best his advice was invaluable. Sir Charles has left behind him the reputation of a great servant of the public, and the memory of a cheery and lovable personality.

An enterprising insurance company announces that it is prepared to issue policies to indemnify owners of Victory Bonds against loss of capital due to the drawing of the bonds for repayment at par. Prior to the recent conversion scheme, these bonds stood below par value, and therefore the holder had a benefit if his bonds were drawn, but now that the bonds are quoted considerably over par the holder of a drawn bond suffers a loss in comparison with the market value.

The premium to cover this loss in the event of the bond being drawn on September 1st, 1933, is 5d. for every £1 over par per £100 at the time the insurance is effected. Thus, if a bond for £100 is quoted at £107, the premium would be 2s. 11d., but there is a minimum premium of 5s.

Some of the largest building societies in the London district have issued an announcement stating that the rate of interest to be charged on new mortgages granted by them in any part of the country until further notice will be reduced by ½ per cent. per annum. The new rate will apply to applications in hand and not completed at the time of the announcement, but not to mortgages previously in existence.

A new arrangement respecting Income Tax in relation to Building Societies has just been issued, which will take the place of what has been known as Arrangement "B," although officially designated "No. 13A." The new arrangement is called "No. 13A (1932)," and comes into operation as from April 5th last. Like the previous arrangement, it is of a voluntary character, but societies which do not agree to adopt it will be assessed under the ordinary Income Tax provisions. An important difference between this new arrangement and arrangement "B" is that the whole of the profits of building societies will now be assessed in some form, whereas under arrangement "B" certain dividends and interest of those societies credited to investors was assessed upon only one-half of the full amount. On the other hand, the rate of tax to be assessed on a certain balance of the dividends and interest is now to be only two-fifths of the standard rate, whereas the lowest rate of assessment hitherto on any part of the income credited to investors has been one-half of the standard rate.

Briefly stated, the new arrangement provides that any society which adopts the scheme thereby consents to be directly assessed under Schedule D at the standard rate on dividends or interest which the society credits to investors on investments over £5,000 in the aggregate (husband and wife being treated as one person), and at the same rate on income from investments of whatever amount credited to and held by or on account of any incorporated company or society. On the rest of the dividends or interest on investments in the society, it consents to be assessed at two-fifths of the standard rate. A further provision is that the society consents to be assessed at the standard rate on the remainder of its profit not included in the above, this profit being arrived at after deducting working expenses, and a subsequent paragraph defines what these working expenses are to include. Investors in the society will not be liable to Income Tax on their interest or dividends, but will have to include them in their total income for surtax purposes. The full text of the new arrangement will be found in another part of this issue, and examples of computations prepared by Somerset House officials will be found in the September number of the *Building Societies' Gazette*.

It is interesting to note that paragraph 6 of arrangement "B" is in substance reproduced in paragraph 10 of the new arrangement, and it will be observed that although the auditor of the society is required to give a certificate as to the accuracy of the amounts returned for the Schedule D assessment, the society is to permit any duly appointed officer of the Commissioners of Inland Revenue to verify the correctness of any certificate given under the arrangement, by inspection of the books and accounts of the society.

A case of some interest relating to the meaning of the term "office or employment" in sect. 45, sub-sect. 4 (ii) of the Finance Act, 1927, came before Mr. Justice Finlay a short time ago in a case stated by the Special Commissioners. An ordinary director who had been receiving fees of about £300 per annum, was appointed a member of the Executive Committee of Directors on full-time service, and became entitled to an additional remuneration of £5,000. It was claimed by the Inland Revenue that this constituted a new employment. The two Commissioners who heard the appeal held different views, but one of them withdrew his opinion, and the decision was given in favour of the taxpayer.

In delivering judgment, Mr. Justice Finlay confirmed the view expressed by the Commissioner whose ruling prevailed, that the word "employment" meant substantially the same as "office," and that the term "office or employment" was not intended to indicate the way in which a person was employed, but merely to describe a substantive thing, and no distinction could be drawn for the purpose of the Act between the different employments of persons holding the same office. It therefore followed that the additional duties which the director undertook did not constitute a new office. He accordingly gave judgment in favour of the taxpayer. His Lordship said he had come to the conclusion, with

some reluctance, that he could not interfere with the decision of the Special Commissioners, and he threw out the suggestion that in a case where two Special Commissioners held different opinions it might be advisable to have a re-hearing before three Commissioners.

The Stock Exchange Committee for General Purposes has passed a resolution confirming its recommendation of March 1st last to the effect that commissions allowable to approved banks and banking houses should be not more than 50 per cent., and to all other agents not more than 33⅓ per cent. This question of division of brokers' commission has been the subject of strong representations by an informal Committee of Stockbrokers, whose counter proposals were that the banks should receive 33⅓ per cent. commission, and other agents 25 per cent., and that the minimum commission of £1 should not be divisible. The whole matter has been under discussion at joint meetings of the Stock Exchange Committee, a deputation from the informal Committee of Stockbrokers, and representatives of the banks. After giving careful consideration to all the circumstances, the Committee of the Stock Exchange have adhered to their original view.

It appears that in the course of the discussions which took place, the representatives of the banks indicated that they could neither agree to the reduction of their share of commission, nor to the proposal that the minimum commission should not be divisible, as the bulk of their customers' orders carried this minimum. They submitted that through their network of branches they collected a large amount of business which would not otherwise reach the Stock Exchange, and they contended that they were not over-remunerated on the 50 per cent. scale for their trouble and responsibility. They also indicated that if they did not receive what they considered an adequate share of commission they would have to take steps to protect themselves.

A further meeting of the objecting Stockbrokers' Committee has been held. The proceedings were private and the precise terms of the conclusions they arrived at are not available, but they have since issued a statement of their views in which their counter proposals referred to above are repeated with supporting arguments. It is suggested in some quarters that members of the Stock Exchange would improve their prospects of obtaining more direct business and minimise the competition of the banks if a fund were set up to guarantee the completion of orders, and thus give additional confidence to the public.

The published figures of receipts of the railway companies for the first 36 weeks of the current year show a decrease of £9,946,000 in comparison with the receipts of the corresponding period of last year. Of this total the London, Midland and Scottish Company accounts for £3,512,000, the London and North Eastern £3,231,000, the Great Western £1,790,000, and the Southern £1,413,000. In view of these figures, the railway companies have invited the railway trade unions to a meeting to discuss labour costs with the object of obtaining substantial relief. The last alteration in railway wages took place in April of last year, the saving resulting from which was estimated to amount to nearly £5,000,000 a year.

On the audit of the accounts of the Borough of Poplar objection has been taken by certain ratepayers to the action of the Poplar Borough Council in paying their employees at a rate 10 per cent. above the wages rates recognised by trade unions and other negotiating bodies. In giving his decision the district auditor referred to judgments of the Courts in other cases where excessive rates of payment had been alleged. One of these was the Woolwich case, in which the Lord Chief Justice said it was difficult to decide where exactly the line ought to be drawn. "If, for example," he added, "the appropriate wages according to some award are 40s., and the wages in fact paid are £40, it is perfectly obvious there is a great excess. If the wages paid are 45s., the problem becomes more difficult." The other was a previous case in the Borough of Poplar' in which Mr. Justice Sankey said: "In cases near the line it would be as difficult for an auditor to surcharge as it would be for the Court to over-rule an auditor."

On these authorities, the district auditor came to the conclusion that he ought not to disturb any of the wage payments, as the margin of excess over the "market wage" was so narrow as to render it difficult to say that there had been an unlawful exercise of discretion. The objection accordingly failed.

Speaking at the National Conference of Friendly Societies held at Leicester last month, the President referred to the unprecedented dislocation of trade and the appalling amount of unemployment which, he said, had a detrimental effect

upon Friendly Society development, not merely because of the lack of money among the workers, but because of the deteriorating effect which it had on the physical wellbeing of the members, bringing in its train more numerous and longer claims upon the funds of the societies. The societies, he said, would also suffer considerable loss of income through the reduction of the rate of interest on gilt-edged and other securities, and future valuations would in some cases have to be made on a lower interest basis than formerly.

PAYING-IN FRAUD AND BANK'S LIABILITY.

IMPORTANT aspects of banking law and practice were exhaustively considered by the Court of Appeal, comprising Lords Justices Scrutton, Lawrence and Greer, in the recent case of *E. B. Savory & Co.* v. *Lloyds Bank Limited.* The Court held that the system whereby a cheque may be paid into one branch of a bank for the credit of a customer's account at another, by simply filling in the amount of the cheque on a paying-in slip together with the customer's name and the branch at which he has an account, is so far inherently defective as to be capable of depriving the bank of the statutory protection which it might otherwise enjoy by virtue of sect. 82 of the Bills of Exchange Act, 1882, the provisions of which are in the following terms :— "Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment."

The plaintiffs, E. B. Savory & Co., a firm of stockbrokers on the London Stock Exchange, had an account at the Midland Bank, on which they drew over a period of years (amongst others) 89 cheques for sums totalling £6,012 in favour of jobbers with whom they dealt. In accordance with the rules of the Stock Exchange those cheques were made payable to the jobbers or bearer, and they were crossed. The cheques were stolen by clerks in the employment of the plaintiffs named Perkins and D. C. Smith—43 amounting to £2,295 by Perkins, and 46 amounting to £3,717 by Smith—and the defendants, Lloyds Bank Limited, collected those amounts from the plaintiffs' bank, the Midland Bank Limited, on behalf of the dishonest clerks. The plaintiffs sued the defendants for damages for the conversion of the cheques, and the defendants pleaded the statute. It was conceded that the defendants had acted in good faith, the real issue being whether they had acted also "without negligence."

The *modus operandi* of Perkins was to take his stolen cheques to Lloyds' Threadneedle Street or Monument branch, and fill in the paying-in slip in each case in the name of the payee of the cheque with a direction to Lloyds to credit the amount to the account of Perkins at Lloyds' Wallington branch. Lloyds' London branch did not know the drawers or payees, nor who Perkins was, nor whether he was entitled to direct them to pay the proceeds of the cheques to his account at Wallington, nor why they were not being paid in to the credit of the payee. Further, although the paying-in slip purported to indicate that the payee whose name was stated on the cheque had filled in the slip, it did not purport to indicate the payee as such or the drawer of the cheque. The London receiving branch forwarded the paying-in slip to the customer's country branch, but sent the cheques themselves direct to the Clearing House. The result was that Lloyds' information as to any given transaction was not co-ordinated, as the receiving branch (which did not know Perkins) saw the cheque, whilst the country branch (which knew Perkins and might have been put upon inquiry on sight of it) saw only the paying-in slip.

By a similar course of procedure, Smith procured Lloyds' head office to pay the cheques stolen by him to the credit of an account maintained by his wife in the name of "D. Cowie Smith, wife of David Smith" first at their Redhill and later at their Weybridge branch.

The evidence indicated that Perkins and Smith were the first persons in 40 years to take such simple yet ingenious advantage of the system thus operated not only by Lloyds but also by other banks.

Lloyds' manager at Wallington knew, apparently, that Perkins was a stockbroker's clerk, but did not ascertain the name of his employers, being satisfied to open the account with Perkins on an introduction by a footballer well known in the district. As to Mrs. Smith's account, Lloyds knew her as the "wife of David Smith," but who David Smith was, and whether his status was that of an employee, and, if so, who employed him, they did not know, for they took the (not insupportable) view that they were under no necessity to ascertain particulars relating to the husband—or, for the matter of that,

relating to the son, daughter, brother or sister—of their customer. Lord Justice Scrutton arrived at the view, however, that having regard to the risks which banks must bear in mind, "husband and wife are usually sufficiently one person" to require them in opening a married woman's account to ascertain her husband's occupation and the name of his employer, if any; otherwise, accounts in the names of the wives of dishonest clerks would become as popular as they appeared to be in the case of fraudulent bankrupts. Could it be doubted that if Lloyds had known who and what Mrs. Smith's husband was they would have inquired more closely into her account, which was being systematically fed by cheques drawn by a business firm in London and paid in neither by the customer herself nor by her husband, but (apparently) by a third party in whose favour the cheques were drawn—assuming their system was such as to place all the data within the cognisance of one branch?

It was further in evidence that Rule No. 29 in the book of rules issued by the defendants to their branch managers stated that "No new current account should be opened without knowledge of, or full inquiry into, the circumstances and character of the customer." If, then, the bank knew that a customer was an employee it would know of the risk that he might be dealing improperly with a cheque drawn by or made payable to his employer. The details it could know respecting a cheque paid in at a branch other than the one at which the customer has his account if a paying-in slip were so devised as to require the necessary information to be furnished.

Moreover, Rule No. 36 stated: "No cheques or other documents made payable to a firm, company, or anyone in the capacity of a principal, should be accepted for credit of the private account of a partner, agent or clerk, or other person closely connected with the principal, or negotiated for such person, without the principal's written authority." The system as operated might well impede or prevent the carrying out of that rule.

It was intimated to the Court that the defendant bank had under consideration the possibility of altering the system having regard to the risks therein involved now brought to light.

The result of this action was that the defendants were held to have acted negligently (*a*) in opening the offending accounts without making sufficient inquiries, and (*b*) in receiving at other branches cheques for the credit of those accounts without passing on sufficient information concerning the cheques to the branches where the customers' accounts were kept.

Judgment was accordingly entered for the plaintiffs.

SURPLUS ASSETS.

THE Companies Act, 1929, sect. 247, provides that subject to the provisions of the Act as to preferential payment, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the Articles otherwise provide, be distributed among the members according to their rights and interests in the company.

The Articles commonly provide, however, that losses are to be borne in proportion to amounts paid up on shares at the date of the winding up, and that a surplus is to be distributed in a like manner.

The term "surplus assets" is in itself ambiguous; it may mean surplus after discharging outside liabilities, and it may mean surplus after discharging outside liabilities and returning the capital subscribed by the shareholders. The term will always include uncalled capital, but it may refer to the surplus remaining after payment of the costs of liquidation and the debts of the company, and this is its usual meaning, or to the surplus remaining after paying these costs and debts and the amounts paid up on the shares. The term "surplus assets," when used in Articles providing for distribution among the shareholders on a winding up taking place, has no such recognised meaning that the Court is bound to construe it as referring to the assets after providing only for debts, liabilities, and costs, without recouping paid up capital.

The rule to be *prima facie* applied is that shareholders are entitled to equality in distribution, although Articles may be so framed as to throw the losses on the shareholders, or give them the profits, in different proportions. There must be a clear intention to this effect. In *Re New Transvaal Company* (1896), the capital of the company was £100,200 in 100,000 ordinary shares and 200 founders' shares respectively of £1 each, all of which (except one founders' share) were issued and fully paid up. One of the Articles was as follows: "If the company shall be wound up, one-fifth of the surplus assets (if any) shall belong to and be divided among the holders of founders' shares, and the remaining four-fifths of such surplus assets shall

belong to and be divided among the holders of ordinary shares in proportion to the amount of capital paid up on the shares held by them." Another Article provided that the profits in each year should be applicable in or towards payment of a dividend of 8 per cent. on the amount paid up on the ordinary shares, and that the surplus (if any) should be divided, as to one-fifth among the holders of founders' shares, and as to the other four-fifths among the holders of ordinary shares in proportion to the amounts for the time being paid up thereon. The company went into voluntary liquidation, and, after providing for all debts, costs, and liabilities, a sum of about £90,000 remained for distribution among the shareholders. It was held that, having regard to both Articles, " surplus assets " meant the assets remaining after providing for debts, costs, and liabilities, and also recouping the paid up capital subscribed by all the shareholders.

In *Re Ramel Syndicate, Limited* (1911), the capital of the company consisted of 5,000 shares of £1 each, called " A " shares, and 5,000 shares of 1s. each, called " B " shares. The Articles provided that in the event of a winding up the surplus assets should be divided into two moieties, one of which should belong to and be distributed among the holders of the " A " shares, and the other among the holders of " B " shares, and that the profits available for distribution should be divided in the same way. All the shares had been paid in full. The company went into voluntary liquidation. The liquidator paid the debts of the company and the costs of winding up, and had a balance in his hands. On a summons for the determination of the question how the balance ought to be divided between the two classes of shareholders, it was held that surplus assets meant the surplus after payment of outside liabilities and repayment to the shareholders of capital paid up.

In every case where surplus assets are directed to be divided between two classes of shares without reference to the nominal amounts of the shares or the amounts paid up, there is a presumption that surplus assets means a surplus after payment of outside liabilities and repayment of capital, and it needs clear and express words to give the phrase the meaning of surplus after payment of debts and costs only.

In a recent case (*Re Dunstable Portland Cement Company* (1932), the company's Memorandum of Association provided that the preference shareholders should be entitled " in a winding up to such a share of the surplus assets as shall provide for the holders of preference shares an amount per share equal to one-half of the amount per share provided for the holders of ordinary shares, but so that the total sum so provided shall not exceed five shillings per share, the preference shareholders being entitled to no further participation in the profits or assets." It was held that the expression " surplus assets " meant what was left after the payment of debts and the repayment of the whole of the preference and ordinary capital.

In another recent case (*Re William Metcalfe and Son, Limited* (1932), a company with 800 preference and 1,400 ordinary shares of £10, decided in 1928 to sell the main part of its business, and a resolution was passed to wind up voluntarily. At that time all the dividends on preference shares had been paid, but those of the ordinary shares were in arrear since 1918. In the course of winding up all debts and paid up capital had been repaid and there remained surplus assets of £21,000. By the Memorandum the preference shares were to have a cumulative preferential dividend of 5 per cent., and were to take priority, and no later issue of shares was to affect their rights. The question the Court was asked to decide was whether the surplus assets were distributable rateably between preference and ordinary shares or belonged to the ordinary shares only.

It was held that " surplus assets " in the present and similar cases were not capital but part and parcel of the property of the company not required for the discharge of its liabilities or for returning to the shareholders the capital which they had paid up. *Ex hypothesi*, the capital was repaid before the surplus assets came into existence as such. Those assets were distributable among the shareholders in accordance with their contractual rights *inter se*. Every person who became a member of a company became entitled to a proportionate part in the capital of the company, and, unless it was otherwise provided by the regulations of the company, to the same proportionate part in all the property of the company. Preference shareholders were members of the company and as much shareholders in it as ordinary shareholders, and they must be treated as having all the rights of shareholders except so far as they had renounced them. Neither by the Memorandum nor by the acceptance of priority had the preference shareholders waived their rights. There was no difference in the quality of assets. Surplus assets only arose generally in the case of a successful company. If it were said that the arrears of dividend on the ordinary shares preclude a

rateable dividend between them and the preference shares, the answer was that the contract between them had not been framed to meet such a case. Therefore both classes of shares were entitled to share in the surplus assets.

It should, however, be noted that a contrary view was taken in *Collaroy Company, Limited*, v. *Giffard* (1928), where the company's Memorandum declared that the preference shares should confer "the right" to a fixed cumulative preferential dividend at the rate of 5 per cent. per annum on the capital paid up thereon and "shall rank" both as regards dividends and capital in priority to the ordinary shares. The Articles provided that the preference shares should confer "the right" to a fixed cumulative preferential dividend at the rate of 5 per cent. per annum and "the right" in a winding up to repayment of capital in priority to the ordinary shares. It was held that the Memorandum and Articles contained an exhaustive delimitation of "the right" of the preference shareholders, and that in the event of a winding up they would be entitled to a return of their capital, but not to participate in surplus assets.

AUDITS BY TENDER.

The following article appeared in *The Accountant* of September 10th, and is reproduced by permission :—

Despite indications of a prevalent opinion to the contrary, from which even the statute book is not altogether free, an audit at the present day is not a matter of clerical routine. It is, on the other hand, the submission of the records of financial transactions to the skilled judgment of an independent person. The exercise of this judgment does, without doubt, involve an amount of clerical labour, but this contributes only in a minor proportion to the fee which is the proper remuneration of the auditor. These remarks are prompted by a recent recrudescence in one or two quarters of what we deem to be the objectionable practice on the part of local authorities of advertising the audit of their local accounts as being open to tenders which they invite.

One great objection to this practice is that in the long run it must be bad business. While the local authorities concerned would doubtless say, if questioned on the point, that they do not necessarily intend to accept the lowest tender, yet the only real reason for the procedure adopted must be the desire to effect a possible cash saving. In any event the minds of the members of the committee making the appointment must be deflected from the purpose of securing the utmost efficiency of the audit by the competing desire for economy in expenditure.

We are aware that there is a salutary rule that local authorities should safeguard their funds, and obtain the best advantage of the market by obtaining tenders when purchasing goods. But the bargain between the vendor and purchaser of commodities can bear no analogy to the relationship which ought to subsist between the giver and receiver of skilled technical advice based on trained judgment, and we suggest that the members of local authorities who are responsible for the issue of tenders for an audit have erred through failure to perceive this distinction. Goods delivered against tender can be sampled, tested, and if necessary rejected; but there is no measuring rod from which the efficiency of an audit can be read off, and a skimped audit which does not go the whole way may well be worse than useless through creating a false confidence. It is emphatically impossible to argue that pounds "saved" by the securing of an apparently "cheap" audit can represent economy; on the contrary they may represent a most dangerous form of extravagance.

The practice we are now criticising is equally open to objection from the professional point of view. There is a natural reluctance on the part of firms of the best reputation to be brought into a competition, by way of a kind of Dutch auction, with their professional brethren. There can be little doubt that such firms feel themselves precluded from offering their services by the consideration that an audit for which the fee is cut down by competition to the lowest limit is hardly worth bringing into their offices. The consequence is that the action of the local authorities concerned actually tends to prevent them receiving the best and most expert advice. In using this argument we do not think we appeal to any unreasonable professional pride. If we may argue by analogy, is it credible that the members, say, of the medical profession would consent to compete for the honour of treating a distinguished patient by quoting against one another competitive fees for their services?

A recent case in point was provided by the Borough of Gillingham, and in that instance we should like to make the further criticism that the form of advertisement in which tenders were invited is open to objection. In this case separate fees were required to be quoted for (*a*) a complete audit, and (*b*) a "partial" audit. What a "partial audit" may mean we have no material for judging, and, unless accompanied by a careful definition, the phrase is self-contradictory. We can well imagine that unless persons tendering were in some way put into possession of more information than was conveyed in the advertisement, the committee making the appointment was likely to be confronted with a very large variety of quotations under this sub-head, and it appears to us likely that in the atmosphere of the present day there was a temptation to accept the proposed programme which was least comprehensive and therefore, presumably, least expensive. We fail to see how this could promote the true interests of the ratepayers of the borough concerned.

While we do not go so far as to say that we think Chartered Accountants ought to refrain from tendering services which are invited in this particular manner, we do take the opportunity of expressing our concurrence with the suggestion which has recently been made by our contemporary, the *Incorporated Accountants' Journal*. This is to the effect that the better plan would be for a proper and reasonable fee to be fixed for the work required. The council could either take independent advice from outside on this point, or alternatively they could call upon the experience of their own borough accountant for the purpose. The fee which the council is prepared to pay having thus been fixed, the relative advertisement inviting persons prepared to undertake the work could name the figure. Persons who responded

by sending in their names for consideration would not do so in the dark, and the effective value of their proposals would gain accordingly. A committee could then select a few of the names as representing persons whose services appeared to be of maximum benefit to the corporation, and the council could then make a final selection from this short list.

DEPRECIATION RATES AND INCOME TAX.

The following addition has been made to the list of agreed normal rates of depreciation for Income Tax purposes since May last :—

Cotton Spinners and Manufacturers: Expenditure on Adaptation of Plant and Machinery.

The Board have had under discussion with representatives of the Cotton Spinners' and Manufacturers' Association the question of the treatment of expenditure upon adaptations of plant and machinery in the Cotton Industry arising out of the introduction of the "more looms per weaver" system. It is understood that such expenditure will usually be susceptible of classification under the following headings :—

(1) New shuttles and shuttle stands.
(2) New pulleys.
(3) Spare cloth rollers and brackets.
(4) Warp stop motions.
(5) Weft stop motions.
(6) Shuttle boxes extended.
(7) Sley repairs and renewals.
(8) Fitting two box motions.
(9) Pick and pick motions.
(10) Conversion of ordinary looms to circular box looms for weaving ordinary cloths.
(11) Pick counters.
(12) Alterations to ring spinning frames (new ring rails).
(13) New ring bobbins.
(14) Alterations to mule frames to make larger cops.
(15) High speed drafting (for use in cheaper cottons).
(16) Re-winding machinery.
(17) Automatic weft feeding attachments.

It has been agreed with the Association on behalf of its members that the outlay in question should, subject to the approval of the Commissioners concerned, be dealt with in the following manner :—

(1) and (13) New shuttles, &c. ; and new ring bobbins : Outlay under these headings may be dealt with as if it represented expenditure on further supplies of the ordinary type ; surplus stocks of the old type may be allowed to lapse from the stock figure.

(7) Sley repairs and renewals : In view of the difficulty of distinguishing between outlay under this heading arising in the ordinary way and outlay arising in connection with the adaptation, the whole may be regarded as revenue expenditure.

(16) Re-winding machinery : These machines are complete and separate, and the normal rate of wear and tear for process plant is to be applied.

All other headings : The outlay is to be regarded as capital expenditure, but a special rate of wear and tear allowance, *i.e.*, 12½ per cent., or written-down value, is to be applied for the first five years following the date of the outlay. The balance remaining is then to be treated as process plant, on which the ordinary rate (normally 7½ per cent.) is to be allowed, unless some further arrangement is then made.

Some Notes on Auditing.

A Lecture delivered before the Incorporated Accountants' District Society of East Anglia by

Mr. W. P. GILL,
Incorporated Accountant.

Mr. Gill said : It is my intention to-night to deal with certain matters relating to auditing and other more general matters of interest incidental thereto. The object of an audit is generally considered to be the detection of fraud, technical errors, errors of principle, or errors of omission or commission, and it should be remembered that the latter may be either accidental or intentional.

I consider that it cannot be too often repeated that the audit of an account does not strictly commence until the accounts have been prepared. Therefore an audit is nothing but a checking and investigation of accounts already prepared, and a verification that the accounts do represent a true statement of the transactions and affairs of the business or concern to which they relate. In actual practice the professional accountant often finds himself called upon to prepare the accounts and then audit same. In such cases the work of accountancy and auditing generally goes on side by side, and the verification of the records and allocation of the items to their various personal and impersonal accounts is dealt with as the accounts are prepared. I am personally of opinion that in these cases it is very desirable that the professional accountant should endeavour to get his client to keep such records as will, to a great extent, reduce that part of the work which is more strictly defined as accountancy or book-keeping. My reason for this is that it provides a greater opportunity for the auditor to check the records, as he will then have his client's version of each transaction before him, whereas the more accountancy work falling upon the auditor means that there is less check. In particular, I have in mind accounts of private persons, firms and companies where there is very little attempt to keep analytical records. If the analysis or records kept by the client are such that they show which items he states are purchases of goods and materials, the check by vouching is much stronger than where the accountant makes his own analysis dependent solely upon his examination of the vouchers.

I should like also to mention in these opening remarks that the liabilities of an auditor should always be in the mind of the auditor when conducting an audit. I hope to refer further to this aspect of an audit later on.

Do not be afraid to make notes in the audit note book during the course of your audit. It is not a question as to whether your principal will judge you by the reasonableness of your notes, but rather that he will have an opportunity of dealing with a point on which he alone should decide.

In the case of a new audit it is desirable that the clients' instructions as to the work to be done or not to be done should be obtained in writing, or if received verbally then confirmed in a letter from the auditor to the client. In addition notes should be made of any verbal instructions or information received during the course of the audit.

I suggest that at the first audit, and in fact at each subsequent audit, if you are privileged to be appointed auditor for two or more years in succession, you should arrange to go over the premises used by the concern and make yourself familiar with the business carried on. When making your inspection of the premises take particular notice of the plant and machinery in use, method of handling stocks of raw materials and finished

goods, and method of despatch of orders. On subsequent visits look out for changes in plant, &c. The information thus gained will be useful when dealing with the records. Here, perhaps, I might usefully refer to the fact that it is not sufficient to check the books, but that it is essential to go behind the mere records. The inspection of the premises, &c., is, I consider, one of the methods of getting behind the records. The whole system of office organisation should be inquired into, including an examination of the book-keeping system ; who and what are the duties of the various members of the office staff, and what internal checks, if any, are in use. The method of handling cash and petty cash, and system of paying accounts and wages, should be especially inquired into.

Before finally mapping out your audit programme you should examine the Memorandum and Articles of Association, or deed of partnership, staff agreements, or any documents of a like nature, taking note of any points which affect the accounts.

EXAMINATION OF DOCUMENTS.

In the case of the Memorandum and Articles of Association it was decided in *Re Leeds Estate Building Society* v. *Shepherd* that it was the auditor's duty to see the Memorandum and Articles in order to ascertain what his duties were. The Memorandum of Association defines the powers and objects of the company mainly in relation to its dealing with persons, firms and others who are not members, whilst the Articles mainly govern the rights, &c., of the members *inter se*.

An interesting experience relating to inspection of documents occurred in the case of the first audit of a partnership, where I discovered that the executors of a deceased partner were carrying on as partners in the business on the grounds that the testator had left to his widow his share of the income of the partnership. As this paper is not concerned with executorship law I will not express an opinion on the legal question as to whether a testator can bequeath a share in a business, as was suggested in this case. I asked for a copy of the will, and also inquired as to how the share of the income belonging to the widow was being dealt with, and as a result I found that the surplus income not required by the widow had been invested in the executors' names and was being considered as part of the testator's estate. This was obviously incorrect, and the executors put matters right, and incidentally, at my suggestion, in view of the amount transferred to the widow, persuaded her to make a will.

Staff agreements providing provision for a commission based upon profits would indicate that care should be taken where such members of the staff are responsible for valuation of stocks, book debts, &c.

Having thus obtained a general knowledge of the business, records and documents, we should now draft a programme suitable to the case, making provision for careful investigation at the points where the system of records, &c., is weak. Do not let your audit programme become the basis of an automatic check each year ; endeavour to make it flexible, and on subsequent audits look round for possible variations, such as less vouching of invoices and more thorough examination of the primary records from which the wage roll is prepared.

In cases where you have succeeded another auditor you should obtain, if possible, a copy of his report of the accounts for the previous two or three years. If you are unable to obtain satisfactory explanations relating to any observations in these reports you should get in touch privately with the previous auditor in an endeavour to obtain such explanations.

TRIAL BALANCE.

May I here refer to the fact that if the trial balance is prepared before you commence your duties, the fact that it does balance does not prove the accuracy of the records, as there may be errors of commission or omission, both accidental and deliberate, and compensating errors in the records. In other words, a trial balance should be regarded generally as a proof only of the arithmetical accuracy of the books, and even this is not a certainty.

Where there are differences on the trial balance I am personally inclined to suggest that we should beware of short cuts. The locating of an error by the various short cut methods is often a matter of pure luck. I remember on one occasion, when looking for an item which was half the difference on the trial balance, on opening the ledger the item was on the page before me, but I can also remember more frequent occasions when I tried the short cut methods but was eventually, after some delay, forced to adopt more elaborate methods. I personally prefer to localise the error where possible, commencing with an analysis of the private or nominal ledger. Do not, I suggest, treat a small difference as of no account. As an example I would quote one of my earliest experiences where the trial balance totals ran into six figures and the difference was only one penny, but I was astounded at the number of errors I discovered before I succeeded in getting the trial balance correct.

It is very desirable that the opening balances should be checked, as I have found it quite a common practice for an inexperienced clerk to correct a creditor's or debtor's account of the preceding year and amend the opening balance. The question as to the amount of testing of posting to be done will depend upon the individual case, and in this connection the auditor will probably use the knowledge he has acquired as to the system of recording the transactions. Instead of checking any postings it may be possible to apply summarised tests, and I have in mind one such case which I deal with personally. The books kept are nominal ledger, bought and sold ledger, cash book, petty cash book, and a book in which a quarterly analysis of the bought and sold ledgers is entered. By summarising the cash book, which is balanced monthly, building up bought ledger and sold ledger total accounts from the analysis books, I have found it possible to test the whole of the books by summarised accounts. I would like to suggest that students should cultivate the habit of asking themselves " Why and Wherefore " am I instructed to test or check this or that ? I mention this because of a rather interesting experience of a friend who was instructed to check the last month's postings to sales and bought ledgers, and then extract the balances, but no reason was given for this instruction. When carrying out the audit for the second year he asked himself : " Why did he check only the last month's postings ? " and the answer was : " To facilitate the extraction of balances."

The cash book and pass books should be checked. In the case of *Wilde and Others* v. *Cape and Dalgleish* the auditors consented to judgment on a claim for negligence and breach of duty on the grounds that they did not check the plaintiff's pass book with the cash book. In this connection I would like to draw your attention to the fact that in one reported case of defalcation by an official of a local authority we had the rather remarkable admission by a Government auditor that it was not his custom to check the cash book and bank pass book. I need hardly say that had he done so the defalcations would have been discovered at once, and it was possibly the knowledge that this check was not done that led the official concerned to adopt his particular method of defalcation. A point should be made to see that all receipts are banked daily or as frequently as possible,

and that no cash received is used for any expenditure. In the case of a secretary of an institution I was informed by the individual who was acting as the hon. auditor's representative that he had knowledge of complaints that receipts for subscriptions were not received until some weeks after payment. My remark was that when the amount of these subscriptions, for which receipts were delayed, exceeded the secretary's monthly salary, developments might be expected, and within a year from this discussion the storm broke.

Cash sales receipts are most difficult to check unless there is an efficient stocktaking system in force or special accounts kept in which stocks are valued at selling prices and purchases charged out at selling prices. Special receipts will receive attention, and care will be taken to see that sales of assets are properly accounted for, and documents such as solicitors' completion statements on sales of properties, auctioneers' accounts and the like, including any account relating to the recovery of income tax, should be inspected. The bank paying-in book should be tested to the cash book and the amount of the make-up checked with the individual entries in the cash book. Where counterfoil receipt books are used inquiries should be made as to the system of control of the spare books. The counterfoils of receipts given should be tested to the cash book. Where outside salesmen are employed we should ascertain whether they are permitted to collect accounts, and, if so, the system used.

The practice which I recently came across of allowing the traveller to pay receipts into his own bank account and to make a weekly settlement with his firm is not a system that could be recommended. If the traveller died soon after collecting an account and his estate was found to be insolvent, a bad debt would appear to be the result, unless there is a guarantee bond.

VOUCHING.

We will now turn our attention to the payments side of the cash book and petty cash book, and we have here another example of going behind the books, namely, the examination of vouchers.

All expenditure by cheque or petty cash should be vouched if possible, purchases probably by invoices to day book, but all other items which do not pass through any books except the cash or petty cash books and ledgers should be vouched to these books.

When examining vouchers for payments of rent, rates, insurances and similar items, such as payments for advertisements on theatre and cinema screens, a note should be made of the period covered by the payment in order that the amounts of accrued liabilities in respect to such items may be checked when verifying the liabilities, and also that the question of payments made in advance and unexpired insurance payments, &c., may be dealt with. Also remember that endorsed cheques are not good vouchers as the endorsement may be forged, or even if the cheque has gone through the payee's account it may have been exchanged for cash. Instances of this arise in the case of butchers' accounts, where the sale notes at markets are the only vouchers available, and these have a habit of disappearing. Also, whilst the payment may be mainly for goods bought, the balance might be exchanged for cash where the purchaser has run short of pocket money.

The system of checking invoices with goods actually received, and prices agreed with contracts entered into, &c., should be inquired into, and where there are no invoices care should be taken to see that the entries definitely relate to goods received. At the time of examination of the day book look out for the possibility of invoices entered at the end of the year for goods which are not included in the stock figures. If the audit is conducted some time after the end of the financial year it may be possible also by reference to invoices entered for the following year to make sure that invoices for goods included in stock have not been held over.

In dealing with the sales ledger and day books, where there are credit sales the possibility of suppression of entries and the misappropriation of the cash should not be overlooked. If there are order books they should be tested to the invoice duplicates, and these in turn tested to the day book. Special care is necessary to ensure that at the close of the period goods entered as sold have actually been despatched and are not included in the stock.

All contra transactions should be checked in view of the possibility that they may relate to the set-off of private or personal debts. Where the records are inadequate, or where all postings are not checked, this question of contra accounts should receive special attention.

In the case of partnerships, the authority of partners to withdraw sums on account of profits or capital should be verified.

With regard to discounts, allowances and credits, an examination should be made of the entries and any large amounts queried, as there have been cases where cash defalcations have been covered by passing through credits of one kind or another for the amounts misappropriated.

WAGES.

The wages item in any accounts which you may be called upon to audit should receive special attention. The pay roll will require very careful examination. Firstly, inquiry should be made to ascertain in full detail how the wage sheets are prepared and from what material, *i.e.*, individual time sheets, foreman's sheets, &c., and the question of internal check must also be inquired into. If the pay roll and the actual payments are dealt with by the same person the examination for defalcations must be more thorough as the possibilities are greater. If upon inquiry you find that the system of preparing the pay roll and the actual payment of the employees is not an entirely satisfactory one, and that you cannot feel sure that there have been no defalcations, you should report this to your clients, preferably in writing.

The inclusion of non-existent employees, incorrect additions in the casts of the pay roll, and similar methods of defalcations in respect to wages are dealt with in most text books. I should like, however, to refer to a personal experience which shows that there are other methods by which defalcations can be carried out. The firm in question was required to produce actual time sheets of their employees when engaged on certain contract work, and in some cases these employees would, as a result, hand in two separate time sheets for one week, the total number of hours on the two sheets equalling the total hours worked for that week. The pay roll was prepared and the actual payment of wages made by the same clerk, who conceived the idea of filling up some of the incomplete time sheets relating to the ordinary work and drawing the money himself. It was our custom to test a certain number of the employees' time sheets to the pay roll, and it was this test which led to the discovery of the defalcations.

Regarding the National Health and Unemployment Insurance cards, these, I suggest, can be usefully checked with the pay roll, and it is desirable that this test be applied, if possible, two or three times a year. Emergency cards used where the original cards are lost or not handed

in should be viewed with a certain amount of suspicion, as also should any cards with blank spaces.

In this connection I should like to refer to an actual experience of location of defalcations relating to insurance cards. A new clerk appointed by one of my firm's clients, upon arrival, proceeded to reorganise that part of the book-keeping system which we had installed. This was reported to me by one of our clerks, and upon making personal inquiries into the matter I was rather struck by the assurance of the new clerk and his general manner, and decided to keep him under observation. At the end of a fortnight I called to see how he was getting on, and to my surprise found that he had taken over the duty of stamping the insurance cards. I suggested to him that the duties for which he was engaged were sufficient to keep him fully occupied, but he stated that by dealing with the insurance cards he would be able to keep a check on the wages record, and would also be able to keep a card record system for the employees' income tax returns which he had started. I was not satisfied, and upon a visit a week or two later I was rather fortunate to find that he had overstayed a week-end leave. Taking the opportunity, I examined the insurance cards and found them in arrear, and, after considerable investigation, I found a shortage of about £40. I mention this case mainly because it suggests that it might be as well to study the personality of the staff of your client, as it would have been possible for this man to have carried on for some time longer had it not been for the fact that he aroused my suspicions at my first interview with him.

All the entries in the nominal or impersonal ledgers should be checked as to classification, and in view of the information usually required by the Revenue Authorities, notes should be made of any incorrect classification, and particularly of capital or other inadmissible expenditure.

I suggest that the comparison of the figures of the trading and profit and loss account with those at least of the previous year should be made, and any substantial variation in the percentage of gross profit or in the cost of the various overhead expenses, if not already dealt with by the vouching of such expenditure, should be inquired into.

VERIFICATION OF ASSETS.

We will now turn our attention to the verification of the assets. It is, I think, the auditor's duty to ascertain as far as he possibly can that the valuation of the assets is fair and reasonable, but it will depend possibly on the class of asset as to the extent he will be capable of judging. The question as to whether the valuation of Government stocks and securities is fair and reasonable will be simple as compared with that of, say, land and buildings. Provision for the reduction in value of wasting assets must be made. In the case of the *London Oil Storage Company, Limited*, v. *Seear Hasluck & Co.* it was held that it is the duty of the auditor to verify the existence of the assets stated in the balance sheet. The auditor must also satisfy himself that the assets are free of all charges, except those disclosed on the balance sheet. It is now generally agreed that the valuation of the fixed assets should be upon the basis of their realisable value as a going concern.

The consideration to be borne in mind when valuing on the going concern basis appears to be the price a willing purchaser would be prepared to pay if he were taking over the business with the intention of carrying on. I will risk being dull by referring to another personal experience. A bank manager had requested one of his customers to produce a copy of his balance sheet, and the customer, being somewhat nervous as to the questions which might be asked, instructed me to attend the interview with him. At the outset of the interview a copy of the balance sheet was handed to the bank manager, who, after looking at it for a short time, opened up the discussion by declaring that the balance sheet was false and did not show the true state of the client's affairs. I politely suggested to the bank manager that he should withdraw his opening remark first, and then tell me what he had to find fault with. Whereupon he immediately remarked that the assets would not fetch the price at which they appeared in the balance sheet if they were put up for sale; in other words, on the basis of a forced realisation they were overstated. I pointed out that, as the assets were stated to be at cost, and the amount provided for depreciation had been clearly shown on the balance sheet, and the fact that he (the bank manager) had so quickly been able to appreciate the position, indicated that the balance sheet did show the true position.

Before leaving this point of valuation as a going concern, there are exceptions to this rule, as to most rules, and I refer to the necessity of certain companies incorporated under special Acts of Parliament for the purpose of undertaking public works, who are required to render their accounts in a special form under what is called the double account system.

The valuation of the floating or circulating assets, which include such items as stock-in-trade, work in progress, &c., should be at their realisable value. The date on which the value is fixed should presumably be that of the balance sheet, but I believe that it is now a fairly common practice to utilise any information relating to losses which may be known at the time of the audit. I refer in particular to book debts which at the date of the balance sheet might be considered quite good, but subsequent information, such as the calling of a meeting of creditors between the date of the balance sheet and the completion of the audit, would indicate that they were not so good. It is doubtful whether the fall in the market price of stocks between the date of the balance sheet and the completion of the audit should, however, be taken into consideration.

Goodwill when included in the assets is usually at cost or at cost less depreciation. It should not as a rule be written up except possibly on the admission of a new partner or the reorganisation of the firm. There appears to be no obligation to write down this asset.

Sometimes property is held in the names of nominees. If upon examination of the deeds we find this to be so, we should ask for the production of the deed or declaration of trust, if any. If there is no such deed or declaration of trust this should be noted in our report. If there are any mortgages on the properties, the deeds will presumably be with the mortgagee and an acknowledgment that he holds the deeds should be obtained from him. The value at which the premises will appear in the balance sheet is usually the cost price, including the cost of any capital renovations, alterations, improvements, additions, &c. If, however, the premises have been valued for the purpose of the balance sheet, particularly if the valuation is greater than the cost price, then it would be as well to satisfy ourselves that the valuation is a *bona fide* one.

With regard to fixtures and fittings care should be taken to see that additions do actually represent capital expenditure, and that reasonable depreciation is provided for. An occasional re-valuation is very desirable, and an opportunity should be then taken, if possible, to check through from the previous re-valuation or opening account.

In the case of a hotel, the question of maintenance of the furniture and equipment is a very important item,

and the cost thereof can be dealt with by charging a fixed sum each year to Revenue, and should the expenditure either be less or exceed this amount, the difference debited or credited to a suspense account. Alternatively, the actual cost of renewals, replacements and repairs could be charged to Revenue. The first method should have the advantage of equalising the charge against revenue, but it would be necessary to review the fixed charge periodically in relation to the actual expenditure.

When dealing with the item plant and machinery, arrangements should be made where possible to have available a tabulated record of all the main items showing their original cost, cost of renewals and additions, the estimated life and break up value, and the amount of depreciation previously written off. The method of depreciation may be either by a fixed charge over the life of the assets, or a percentage on the reducing balance. In the case of plant and machinery the method of taking a percentage of the reducing balance is most commonly used, on the grounds that the amount of depreciation to charge in the earlier years is high when the cost of repairs is low, and as the plant becomes older and requires more repairing the amount provided for depreciation is lower.

In dealing with depreciation you should remember that you are not expected to be an expert or to have technical knowledge of such assets as plant and machinery, and you are entitled to accept the opinion of those who have such knowledge. Inquiries should be made, however, as to the person upon whose advice the amounts written off for depreciation have been fixed, and upon what basis. If not considered satisfactory, the question should be taken up with the responsible persons, such as the directors in the case of a company, and if still not satisfied, and no alteration is made in the accounts, the auditor should state in his report that he is not satisfied that the provision for depreciation is sufficient.

Loose plant, tools, &c., should be dealt with on the basis of realisable value, the difference between opening valuation, plus expenditure thereon, less closing value written off against the profits. In the case of fishing vessels the same basis for the valuation of nets, gear and stores is used.

Where vehicles have been purchased for cash or on hire-purchase agreements the relative documents should be examined, and if vehicles have been disposed of in part exchange they should be eliminated from the capital account by writing off the loss, if any, on exchange. If purchased on the instalment system, and the total price to be paid is capitalised, care should be taken to see that the balance unpaid is included in the liabilities. Whilst dealing with this branch we might consider the question of petrol pumps, a great many of which have been installed by the petrol companies on the basis of a small initial deposit, the balance to be extinguished by the rebate of about a halfpenny per gallon on bulk purchases. If there is no detailed record of each vehicle, pump, &c., in the ledgers, I would suggest that such a record be kept in the audit note book showing clearly the record of each individual vehicle, &c.

STOCK IN TRADE.

Stock in trade provides me with the opportunity to refer to one of the few decided cases I was able to memorise, namely, the *Kingston Cotton Mills* case, in which it was held that an auditor is not a valuer, that it is not his business to take stock, and that he is entitled to accept the certificate and rely upon the representations of responsible officials or employees of his clients, provided he exercises reasonable care and skill. However, it has lately been pointed out that as auditors we must not take up the attitude that we can accept the figures of stock if certified by a responsible official, but we must take some steps to verify the figures. In addition to testing the extensions and additions of the stock sheets, an inquiry should be made as to methods of stock records and actual handling of stock.

The basis of value should also be considered, and inquiries should be made as to whether adequate allowance has been made for fall in prices, spoilt or obsolete stock. Where there are goods in course of manufacture, these should be valued at cost of materials and labour plus a percentage for overhead expenses, but not forgetting the principle that if these cannot be sold when completed without incurring a loss provision should be made to cover such a contingency.

The percentage of gross profit test is of very considerable value in cases where the rate of gross profit is fairly constant, as unless any large variation in the percentage can be accounted for by the rise or fall in cost of production, or cost of goods purchased, or the selling price, this might disclose errors in stocktaking or improper inflation or deflation of stock values. Where purchases of goods or cost of materials and wages for manufactured goods show a substantial increase without a corresponding increase in the sales or the closing stock values, it would be as well to inquire into this.

The question of invoices for goods entered in the day book but not included in stock, or—possibly where a favourable balance sheet is desired—of including goods in stock which have not been passed through the bought day book, must receive attention. Of course, this omission may be either accidental or deliberate.

It would be as well to compare the basis of valuation with that of the preceding year and inquire into any large differences. If the trade is a seasonal one, then the quantity of stock held should be subject to the consideration as to when stock is taken, either in the busy or slack season. A consideration of this point led to the discovery by a certain bank that all was not as it should be in respect to an advance made to limited company customers of theirs. Another test is that of the number of times stock is turned over in the course of a year. I remember two ladies asking what number of times they turned their stock over, as it had been stated that in their trade stock should be turned over ten to twelve times a year. I suggested that, as their business was mainly a seasonal one, and the season lasted about three months, since they turned over their stock three times in the season, they were in effect turning it over twelve times a year, and they went away quite satisfied. When examining the stock sheets take care to see that no loose plant, utensils, &c., already charged to a capital account are included therein.

Finally as to stock, I suggest that when dealing with the certificate of value, the information as to staff agreements will come in useful, as if the person certifying is entitled to a commission on the profits disclosed this fact should not be forgotten.

WORK IN PROGRESS.

In dealing with work in progress it is necessary that great care should be exercised, and no doubt you have all read the case recently reported in the *Accountant* relating to the liability of the auditor in respect to this item. I was very interested some years ago in a case where a contractor's accounts were prepared by an accountant for submission to certain creditors with a view to arranging extended credit. The accounts showed a surplus of assets over liabilities amounting to several thousands of pounds, and the principal asset—in fact, one might say the only asset worthy of notice—was work in progress. The creditors requested that an accountant

nominated by themselves should be allowed to check these accounts, and this was agreed to. At a subsequent meeting of creditors under the Bankruptcy Act a deficiency of approximately £9,000 was disclosed.

In certain cases I have dealt with it has occurred to me that a useful check on the value of a building contractor's work in progress might be made by comparing the amounts received on account against the value of work done to the date of the balance sheet, as it might usually be assumed that up to the date of the last payment on account the value of work done would at least exceed the amount so received on account, and there would be, in addition, the work done since the date of last payment up to the date of the balance sheet. I do not suggest that too great a reliance be placed upon this check, as from recent experience I find that it is possible for the contractor to persuade the person responsible for giving a certificate for a payment on account to make this in excess of the value of work done to date of such certificate, although I should imagine that this is unusual.

Where a costing system is in use a reference to the contract costing ledger should be made, but it would be wise to ascertain definitely whether such costing records are linked up with the financial books of account, thus providing proof of the accuracy thereof. Where losses are likely to arise provision should be made for these, and the possibility of forfeiture of retention money, fines, &c., should be inquired into.

INVESTMENTS, &C.

Sometimes investments, mortgages, &c., form part of the assets of a firm. A point should be made of following through each investment, &c., from the previous balance sheet. If not now held, see how disposed of; and if sold, that proceeds have been properly accounted for; or if converted into new investments, &c., that they are correctly described. Any new purchases or advances should be verified with brokers' bought notes or solicitors' statements relating to advances on mortgages and the descriptions verified. The basis of valuation should be stated for preference on the balance sheet, and the question of provision for depreciation in values should be considered.

All share certificates, bonds, scrips, deeds, &c., should be verified at the same time, and in this respect I would remind you of the incident referred to by a previous Lecturer relating to a pressing invitation to lunch during which period a suitable rearrangement of certain documents was effected by a confederate. Where investments stand in the names of individuals as nominees, a deed or declaration of trust should be produced. Where shares have been purchased, but the new certificate has not been received at the date of the audit, the transfer deed, or, if this is lodged for registration, the transfer receipt, should be seen.

Where it is not possible to inspect all the securities, the question arises as to the acceptance of a certificate of the person who has custody of them. This will depend on the standing of the person so holding, and you will do well to remember that in the *City Equitable Fire Insurance Company, Limited*, the Judge questioned the soundness of the custom of accepting a certificate of the bank as to their holding of securities.

It would be as well to ask for a schedule of the investments showing their cost and their market value at the date of audit, and if no note appears on the face of the balance sheet as to the method of valuation or of provision for depreciation such fact should be referred to in your report.

BOOK DEBTS.

When dealing with the item book debts it would be useful to extract certain information from the sales ledgers at the same time as the balances are scheduled. Notes should be made of accounts which have been outstanding beyond the usual credit terms allowed; also of accounts where unlimited credit has been stopped and arrangements made for practically cash sales, leaving the old balance to be reduced by instalments or otherwise. Balances which tend to increase or remain stationary should also be noted. In dealing with this item I would again point out that the information gained from service agreements should be applied.

In the case of *A. E. Green & Co.* v. *The Central Advance and Discount Corporation, Limited*, a manager received commission based upon profits. The auditors questioned certain debts, but the manager assured them that these were quite good and they were passed without comment in the auditors' report. Upon a new manager being appointed the position was investigated, and a large sum had to be written off as bad debts, and the auditors were held to have been negligent in that they did not report their opinion on the items in the book debts which they had questioned, and judgment was given for over £600. The question of provision for discounts allowed should not be overlooked, especially where the item book debts is fairly large.

In a recent case of embezzlement by a milk roundsman I was impressed by the fact that each day the quantity of milk handled was regularly checked by the proprietor of the business and no trouble was experienced in accounting for all milk sold. This did not, however, prevent the roundsman from charging up to fictitious customers milk which had been sold for cash. In another case which I had to deal with personally, the firm concerned had periodically sent out accounts direct to the customers with travellers' advice notes. When the customers pointed out to the traveller concerned that they did not owe the amount shown on the account received direct from the counting house, he was able for some time to persuade them that the office staff were faulty and slack. This instance proves the necessity of a request for acknowledgment direct to the firm, and, so far as the audit is concerned, if possible direct to the auditors.

BANK AND CASH BALANCES.

If the bank pass books have not been obtained personally from the bank, a certificate of the balances should be obtained as a verification of same. There have been cases where dummy pass books have been used, and unless this precaution is taken you may receive a dummy instead of the actual pass book.

Cash in hand and petty cash should be verified, if not at the close of business, at the end of the financial year or on the following morning, by vouching up to date when verification takes place and then checking the cash balances at that date. All cash balances should be produced at one time in order to prevent shortages upon one account being made good from cash belonging to another account. After the war I, as paymaster, was responsible for paying off and clearing up the accounts of a light cruiser, and the warrant officer (electrical section) had to hand over his stores to another rating (one of the care and maintenance party). We were tied up alongside one of the Dreadnought class, and as the warrant officer, an Irishman, was short of certain stores he borrowed some from his opposite number on the Dreadnought. After his stock had been checked, found in order and handed over, he managed to return the borrowed stores and he left to return to his depot. His successor was a sadder but wiser man when he found out the position. This story does not relate to cash, but no doubt it could

be applied if all the balances were not called for at the same time.

In the case of petty cash balances, do not forget that in the *London Oil Storage Company, Limited*, v. *Seear Hasluck & Co.* the auditors were held liable for damages on the grounds that they failed to verify the existence of petty cash in hand, which according to the books amounted to £760, whereas in fact there was only £30. In a case that I personally had to deal with the non-existence of a large balance shown on petty cash account led to the dismissal of two clerks, although in the case of the clerk in charge of petty cash there were, in my opinion, grave doubts as to whether he had misappropriated any of the balance which was found to be missing.

LIABILITIES.

With regard to the item liabilities or trade creditors, I suggest that notes be made when extracting the bought ledger balances in the same way as I have previously suggested with the sales ledger. Statements received subsequent to the date of the balance sheet should be vouched to the schedule of ledger balances.

Where possible arrangements should be made to request all creditors to send in a statement of the amount due to them, if any, at the date of the balance sheet, with a special request that if nothing is due this should be so stated. If your clients are agreeable the advantage of this check will be increased if it is requested that such statements be sent direct to the auditor. In some cases I have found the test of payments made within a few weeks after the date of the balance sheet has resulted in items of liabilities which would otherwise have been overlooked. This latter check might, I think, result in the discovery of liabilities which had been held back. Provision for accrued liabilities, such as rent, rates, electricity, gas, advertising contracts, &c., should not be overlooked, and the notes made when vouching these items, to which I have previously referred, will now be used.

RESERVES.

Reserves, or, as I believe some persons would prefer that they be called, "provisions," may be either "specific," *i.e.*, to provide for some known liability the amount only of which is not fixed, such as a claim for damages arising out of breach of a contract, or "general," which are usually to provide for unknown future contingencies or to increase working capital, equalise dividends, or merely to strengthen the financial position of the concern.

I have already referred to the necessity of making specific reserves for bad debts, depreciation, accruing liabilities, losses on investments, &c. If the concern is engaged in a business where contracts for the supply of goods or services arise, inquiries should be made as to any possible claims that might come along for faulty workmanship, materials, &c. In this connection, information might be found of such possible claims where the balances on either the sales or bought ledgers are in dispute. One class of reserve which I have met with, and which would, I think, be called specific, is that relating to the liability for marine insurance calls upon the members of mutual insurance clubs. In certain mutual insurance clubs the members contribute to what is called a "Proportion of Stock." This appears to be, in effect, the capital account, and upon withdrawal of any vessel belonging to a member he is entitled to the "proportion of stock" belonging to such vessel, but it should be noted that, whilst the vessel is insured with the club, the proportion of stock is always "subject to losses," and this fact should be clearly stated on the balance sheet. The proportion of stock due should be taken into account when considering the provision for liability for calls.

In the case of specific reserves, it is the auditor's duty to satisfy himself that the provisions made are sufficient for the purpose of the reserve.

LIABILITIES OF AUDITORS.

The liabilities of auditors have at times provided our legal friends with a fair amount of work. Before mentioning a few decided cases I would like to refer to the liability of auditors to third parties, and probably the liability to the Inland Revenue Authorities is the one most frequently met with. I do not suggest that the auditor's liability to the Inland Revenue Authorities is in the same category as that of, say, bankers and others who are induced to advance money, persons subscribing to shares, and persons purchasing businesses on the faith of figures certified by an auditor.

In a recent case I intimated to a client, who suggested a certain course to me, that I was not anxious to spend an enforced holiday with him at the expense of His Majesty's Government.

An auditor is liable in damages to his clients for negligence where loss is suffered by his clients by reason of fraud or error which he should have discovered if he had exercised reasonable care and skill. He has further liabilities for misfeasance, breach of trust or misdemeanour under the Companies Act, 1929.

In the recently reported case of *Smith* v. *Cronk and Others* the auditor was found guilty of negligence in checking the value of work in progress. I refer to this case as supporting my suggestion of making full notes in the audit note book of any matters which you consider are out of the ordinary, as actually the negligence was that of a clerk employed by Mr. Cronk to carry out the audit. The main act of negligence was the failure to ascertain the existence of liabilities which had been omitted from the balance sheet. The company concerned incurred liabilities, the invoices for which were not received until some time after the accounts were made up. There appeared to be knowledge of this, and the clerk in charge of the audit examined the invoice file for one month after the date of the balance sheet, but this subsequently proved to be insufficient.

In the *London and General Bank* case the auditor was aware that proper reserves had not been made for bad debts in respect to loans advanced against insufficient security, and reported fully to the directors, who, however, refused to alter the accounts. In his report to the shareholders, the auditor made no mention of the lack of security, &c., but merely stated: "The value of the assets as shown by the balance sheet is dependent upon realisation." The importance of this case is that it was held that a person whose duty is to convey information must give the information, and not only so much information as is calculated to invite a request for more. In the recent *Royal Mail Steam Packet Company* case we had again brought home to us the danger of using phrases in a report which are intended for our use at a later date, when we could say that we referred to the matter in our report but nobody asked for any further information.

The duty of the auditor has been defined as being this: "He must be honest—that is, he must not certify what he does not believe to be true—and he must take reasonable care and skill before he believes that what he certifies is true."

The failure to call for creditors' statements in order that he might check these with the ledger led to the auditor of the Irish Woollen Company failing to discover the fraudulent carrying over of certain invoices resulting in an understatement of liabilities, and, as a result, the auditor was held liable in damages.

BUILDING SOCIETIES AND INCOME TAX.

The following is the text of a new arrangement with respect to Income Tax in the case of Building Societies. It is known as Scheme No. 13A (1932).

PART I.—ASSESSMENT UPON SOCIETY.

1. The Society consents to be directly assessed to Income Tax under Schedule D.

(*a*) In respect of the liability of its investors to Income Tax at the standard rate on dividends or interest from the Society, upon the amount credited to investors in the Society's year next preceding the year of assessment for or in respect of dividends or interest: and

(*b*) Upon the amount by which the whole profit, as hereinafter defined, of the Society for the same year exceeds the amount under (*a*).

Rate of Tax.

2. The rates of tax to be charged will be:—

(I) The standard rate in respect of:—

(*a*) Dividends or interest mentioned in paragraph 1 (*a*) arising from:—

(i) Any investment exceeding £5,000 and from any investments exceeding £5,000, in the aggregate, of any investor (husband and wife being treated as one person for this purpose);

(ii) Any investment, of whatever amount, held by, or on account of, or in trust for any incorporated company or society (not being a company or society which is entitled to exemption from tax under Schedule D); and

(*b*) The amount of the excess defined in paragraph 1 (*b*);

(II) Two-fifths of the standard rate in respect of the balance of the dividends or interest mentioned in paragraph 1 (*a*).

Calculation of "Whole Profit."

3. The whole profit referred to in paragraph 1 (*b*) is to be ascertained by deducting the working expenses from the total receipts for the accounting year, in accordance with the rules governing the computation of liability to Income Tax under Case I of Schedule D, subject to the following provisions—

(*a*) Working expenses will include:—

(i) Losses sustained on the realisation of properties mortgaged to the Society;

(ii) Income Tax paid in respect of amounts credited to investors for dividends or interest.

(*b*) Profits or losses arising on the realisation of investments will be excluded.

(*c*) All rents received will be included and rents paid will be allowed as a deduction.

Set-off of Taxed Income.

4. Where the total receipts of the Society for any accounting year include income upon which Income Tax has been paid at the source, the amount chargeable for the following Income Tax year at the standard rate will be reduced by the gross amount of the said income. Where that gross amount exceeds the amount chargeable at the standard rate, there will be deducted from the amount chargeable at two-fifths of the standard rate an amount equal to two and a half times the excess.

Schedule A.

5. All property owned by the Society, whether let or in its own occupation, and also all property in the hands of the Society, as mortgagee in possession, is to be exempted from income tax, Schedule A, except in respect of ground or lease rents, if any.

PART II.—LIABILITY OF INVESTORS.

6. Investors will be required to include dividends or interest in their returns of total income for Income Tax (and surtax) purposes. No charge to Income Tax at the standard rate will be made upon investors in respect of such income from the Society, but it will be included in total income for the purpose of charging surtax.

7. No repayment of tax will be made in respect of income derived from investments with the Society, and the Society will not issue any certificates of payment of tax in respect of such income.

PART III.—MORTGAGE INTEREST PAID BY BORROWERS.

8. A borrowing member who has no taxable income is not to be charged for mortgage interest.

9. A borrowing member who has taxable income is to be relieved from the tax applicable to mortgage interest. Relief will be allowed by the Inspector of Taxes upon a certificate from the secretary of the Society of the amount of mortgage interest paid.

Where the Society's year does not coincide with the Income Tax year, certificates will be accepted showing the interest for the Society's year ending within the Income Tax year, provided that the Society will adhere to this basis in all cases and will obtain an undertaking from each borrower to accept allowances accordingly.

PART IV.—GENERAL.

10. A certificate by the auditor of the Society will be required of the accuracy of the amounts returned for Schedule D assessment. The Society agrees to furnish a copy of its statutory annual account and statement to the Inspector of Taxes for the district in which its head office is situated, and also to permit any duly appointed officer of the Commissioners of Inland Revenue to test the accuracy of the amounts returned or to verify the correctness of any certificate given under the arrangement, by inspection of the books and accounts of the Society.

11. The Society undertakes *for the purposes of paragraph* 2 (*a*)—

(*a*) To require, in the case of each new or additional investment of £500 or more, a declaration sufficient to establish whether the rate of tax to be charged in respect of the dividends or interest is the standard rate or two-fifths of the standard rate; and

(*b*) To make such arrangements as may be practicable for the aggregation of all accounts of the same investor and of husband and wife, whether such accounts are in the same or in different branches or departments of the Society.

12. This arrangement will operate for the period of three years ending on April 5th, 1935. The Society will facilitate a statistical investigation by the Inland Revenue Department of the working of the arrangement by furnishing extracts of the payments of dividends or interest for the Society's year ending within the Income Tax year 1933-34. These extracts will give the name and address of each investor, the amount of his investment, and the amount of dividends or interest thereon, where the investment amounts to £1,000 or more, and similar particulars for a 3 per cent. sample of investments below £1,000.

13. *Investor* includes any shareholder, depositor or lender.

Dividends or Interest includes interest, bonus and any other distribution in respect of shares, deposits or loans.

Investment includes any share, deposit, loan or other similar account.

We desire to adopt the above Arrangement and hereby undertake to abide by the same.

On behalf of.....

.....

.....*Chairman.*

.....*Secretary.*

Changes and Removals.

Miss Annie Ackerley, Incorporated Accountant, has commenced public practice at No. 3 Office, Williams Deacon's Bank Chambers, Altrincham.

Mr. W. F. Atkinson, Incorporated Accountant, has removed his offices from 20, Vine Place to 48, Frederick Street, Sunderland.

Mr. L. F. Elverstone, Incorporated Accountant, announces a change of address to Temple Chambers, Coalville.

Messrs. Beever & Struthers, Incorporated Accountants, announce that their address is now 1, Cooper Street, Manchester.

Messrs. Albert A. Henley & Co., Incorporated Accountants, of Portland House, 73, Basinghall Street, London, E.C.2, have taken into partnership Mr. Norman Gurney Randall, A.S.A.A., who has been associated with the firm for a number of years. The practice will be continued under the same style as hitherto.

Mr. C. A. Holliday announces that his partnership with Mr. Gilbert Robertson has been dissolved by mutual consent. He has entered into partnership with Mr. W. J. Dujardin Bolt. The firm will practise under the style of Dujardin Bolt, Holliday & Co., Incorporated Accountants, at First Avenue House, High Holborn, London, W.C.1.

Mr. F. L. Kilby, Incorporated Accountant, has removed his offices from Post Office Buildings to Bull Green House, Halifax.

Mr. Albert Loveridge, Incorporated Accountant, has changed his address to 40, Hoghton Street, Southport.

Mr. H. D. Peck, Incorporated Accountant, has recommenced public practice at London Assurance Buildings, 70-72, St. George's Street, Cape Town.

Messrs. T. Harold Platts & Co., 126, Colmore Row, Birmingham, have taken into partnership Mr. H. V. Whitaker, Incorporated Accountant, who has been associated with the firm for over seven years. The business will be carried on under the style of T. Harold Platts & Co., as before.

Mr. Ralph Warren, Incorporated Accountant, has commenced public practice at Cardigan with Mr, H. Alwyn Griffiths, Chartered Accountant, under the style of Warren, Griffiths & Co.

Mr. Clifford Yewdall, Incorporated Accountant, has removed his offices to Room 4004, Empire State Building, New York.

Society of Incorporated Accountants and Auditors.

MEMBERSHIP.

The following promotions in, and additions to, the Membership of the Society have been completed since our last issue :--

ASSOCIATES TO FELLOWS.

CHAPMAN, ROY MIDDLETON (Donald H. Bates & Co.), 10, Cheapside, Hanley, Stoke-on-Trent, Practising Accountant.

COXON, WILLIAM CYRIL (Donald H. Bates & Co.), 10, Cheapside, Hanley, Stoke-on-Trent, Practising Accountant.

NICHOLAS, EGBERT TREGARTHEN, County Treasurer and Accountant, Worcestershire County Council, Worcester.

ASSOCIATES.

BORTON, JOHN MONTGOMERY, Clerk to H. G. Galbraith (Douglas Mackelvie & Co.), Sun Building, 102-104, St. George's Street, Cape Town.

BUCKINGHAM, ALLAN THOMAS, Assistant Accountant, The Triplex Safety Glass Co., Ltd., Kings Norton, Birmingham (formerly Clerk to Pearson & Co., Wolverhampton).

CRIPPIN, ALAN, Clerk to Walter Baird (Walter Baird & Co.), District Bank Chambers, 1, Frodsham Street, Chester.

DALAL, HOMI PESTONJEE, formerly Clerk to Batliboi & Purohit, Navsari Building, Hornby Road, Fort, Bombay.

DAS GUPTA, PREMTOSH, B.Sc., Clerk to S. R. Batliboi, 3, Grant Lane, P.O. Bowbazar, Calcutta.

DINAN, WILLIAM PATRICK, Clerk to Sydney Larkin, City Treasurer, The Council House, Coventry.

DIXON, NORRIS HEPWORTH, Clerk to Thomson McLintock & Co., 39, Bennetts Hill, Birmingham.

DUTHIE, JAMES, Clerk to Alex. Davidson, Arbuthnot House, Peterhead.

EVERITT, ERNEST VICTOR (Gibson, Everitt & Co.), Bishopsgate House, 80, Bishopsgate, London, E.C.2, Practising Accountant.

FREEMAN, CHARLES NOEL, Clerk to Douglas, Low & Co., 32, Fletchers Chambers, Longmarket Street, Cape Town, South Africa.

GHOSH, SAROJENDU, B.Sc., Clerk to Philip E. Farr, Rose & Co., 70A, Basinghall Street, London, E.C.2.

GRIFFITHS, BERNARD BINSTEAD, Clerk to Roland Rose, Warren & Co., 72A, St. Peter's Street, Derby.

HANSOTIA, LOVJI CAWASJI, B.Com., Clerk to P. C. Hansotia & Co., 41A, Bruce Street, Fort, Bombay.

HOLTON, SIDNEY RALPH, Clerk to Mitchell & Plummer, Guildhall Chambers, Cheapside, Luton.

MACDONALD, ALEXANDER, Clerk to Hodgson, Harris & Co., Bank Chambers, Parliament Street, Hull.

PEXTON, DONALD HENRY, Clerk to Cole, Dickin & Hills, 18, Essex Street, Strand, London, W.C.2.

PUGH, DAVID GWILLIAM, Clerk to Ford, Rhodes, Thornton & Co., Tower House, Chowringee Square, Calcutta.

SLUGGETT, GEORGE ALBERT, Clerk to C. S. Moores, 15, Bedford Circus, Exeter.

STODDON, CYRIL, Clerk to Hyslop & Lyle, Alloway Chambers, 239, High Street, Ayr.

WHITE, ERIC CHARLES, Director and Secretary, Progressive Supply Co., Ltd., 44, Sadler Gate, Derby (formerly Clerk to Nutt & Horne, Derby).

WOODHEAD, DONALD, Clerk to J. E. P. Close & Co., Colonial Mutual Buildings, 106, Adderley Street, Cape Town.

LECTURES AND TRANSACTIONS

OF THE

Incorporated Accountants' Students' Society of London and District, 1931-32.

Five Year Plan—Taxation Principles—Monetary Policy—Commerce—Surtax on Limited Companies.

The Committee of the London Students' Society does not shrink from controversial subjects when arranging its syllabus, and there is no evidence that the students' meetings suffer from this considered policy. Every branch of commerce and finance may be said to be controversial at the present day, certainly in the sense that the leaders of thought and opinion may not be in agreement either on points of principle or details of administration. The accountant student must be trained to use his own judgment, and there is no better school than that of conflicting theories. The volume of Transactions for 1931-32 reflects the attitude of the Committee by the inclusion of such subjects as the "Soviet Five Year Plan," "Britain and International Trade," and "The Monetary Policy," but as these and other cognate subjects are certain to be embraced in the questions set in the Society's examinations on general knowledge in regard to commerce and finance, it is only right and proper that the candidates should become acquainted with them through the activities of their own Society.

The complete contents of the volume are as follows: "The Soviet Five Year Plan," by Mr. G. Soloveytchik, M.A. (Oxon); "Taxation as an Economic Factor," by Mr. W. J. Back, Incorporated Accountant; "The Principles of Commerce," by Sir Francis Goodenough, C.B.E.; "Britain and International Trade," by Mr. Ernest E. Edwards, B.A., LL.B., Parliamentary Secretary of the Society of Incorporated Accountants and Auditors; "The Stock Exchange," by Sir Stephen Killik, J.P., President of the Society; "The Accountant and the Journalist," by Mr. A. S. Wade, City Editor, *Evening Standard*; "Surtax on Limited Companies," by Mr. H. A. R. J. Wilson, F.C.A., Incorporated Accountant; "The Duties and Liabilities of Executors," by Mr. J. Linahan, Incorporated Accountant; "The Monetary Policy," by Mr. A. de V. Leigh, M.B.E., M.A.; and "The Law Relating to Profits Available for Dividend," by Mr. E. Westby-Nunn, B.A., LL.B., Barrister-at-Law.

THE FIVE YEAR PLAN.

The Soviet Five Year Plan will ultimately prove of more historic than economic interest, but as an experiment in the marshalling of the industrial forces of a nation for commercial purposes it commands the attention of thoughtful people. Mr. Soloveytchik traces the plan from its conception through many vicissitudes until it was actually launched on the world in 1928. The principal object of the Plan is said to be increased industrialisation, forced industrial expansion aiming at "overtaking and surpassing" Europe and America in every branch of production. To that extent it might almost be considered as the legitimate aspiration of a nation, but the real underlying object was not only to create Socialism in the U.S.S.R., but also to make it absolutely independent of the capitalistic world both in respect of production and raw materials. Yet the Plan itself required enormous capital investments and, in actual fact, would have involved the serious crippling of other nations of the world. It is axiomatic to-day that no great nation can prosper whilst others decay, and the author of this paper considers in detail the financial difficulties inherent in the Plan and gives definite and cogent reasons for his assertion that the Plan has failed.

TAXATION PRINCIPLES.

Professional accountants are normally so engrossed in the incidence of taxation that there may be a tendency to overlook or forget the basic principles. The contribution of Mr. W. J. Back, Incorporated Accountant, contends that the economic justification for taxation lies in the fact that the State is a partner in every productive enterprise—as really a factor of production as land, labour, capital or organisation. Adam Smith's four canons—equality, certainty, convenience, and economy—are recalled only to be amended on the ground that the world of to-day is so very different to that of 1776. There follows a reasoned consideration of taxation and current production, and an analysis of the modern principle that savings may be taxed either in the course of conversion into capital in the form of taxes, specifically upon capital, or covertly in an inadequate allowance for the wear and tear of capital assets in the assessment of a tax expressed as being upon income. Mr. Back's summary of the considerations put forth in this address lead him to suggest that a less rapid capital increase may be no disadvantage to the body politic, but it is abundantly clear that increasing population and continual advance in science and its application in invention will continue to call for savings which not only replace those which are expiring, but provide for extensions and improvements.

MONETARY POLICY.

Mr. A. de V. Leigh, M.B.E., M.A., is the Secretary of the London Chamber of Commerce, and may be said to have his finger upon the pulse of the commercial world. He deals with Monetary Policy in a separate article under that title, and, in addition, we notice an illuminating contribution from him on the same subject in the course of the discussion following Sir Francis Goodenough's paper on "The Principles of Commerce." Mr. Leigh condemns the monetary policy of the world, upon which he places the blame for the world crisis in a period when we see, on the one hand, Nature immensely bountiful, scientifically equipped factories capable of providing every human want and ready to raise the general standard of living of all human beings to an infinitely higher level, and, on the other, millions of men all over the world without work, in great poverty and want; factories working, at a loss, to 25 or 50 per cent. of capacity; and the Governor of the Imperial Bank of India referring to the teeming millions of Africa and Asia as half starved and less than half clad. But Mr. Leigh's object in submitting the troubles of the world to the microscope is not to indulge in despondent gloating, but rather to call forth greater effort to combat the evils and to prove yet again that "England only needs a worth-while objective to lead the world again."

INTERNATIONAL TRADE.

The lecture by Mr. Ernest E. Edwards, B.A., LL.B., Parliamentary Secretary of the Society of Incorporated Accountants and Auditors, raises the whole question of tariffs or Free Trade, and the lecturer is in no way dismayed by the fact that the concensus of opinion seems to have swung round in favour of at least emergency or revenue tariffs. Mr. Edwards examines the arguments usually put forward in favour of tariffs and condemns them utterly. He submits that tariffs are certain agents of destruction of our international trade and even the

limited measure of Empire Preference is interpreted as "the taxation of the food and raw materials of 45,000,000 people in Britain in order to subsidise the producers in our Overseas Dominions with a white population of 10,000,000." There is nothing half-hearted about the opinions expressed by the lecturer, but readers will probably be equally interested in the opposing views which are voiced in the ensuing discussion.

COMMERCE.

The name of Sir Francis Goodenough, C.B.E., is inevitably linked with the subject of salesmanship, and it would be no exaggeration to say that he was chiefly responsible for the greater "selling-mindedness" of the trader in this country. His lecture under the title of "The Principles of Commerce" is almost entirely devoted to this subject. Yet, perhaps, the title is fully justified because the success of every business depends on the profitable sale of the goods or services it has to offer. Banking and other professional work may be quite essential to commerce, but it is the actual buying and selling of commodities which is the real core of trade. Sound common sense is the dominant note throughout this paper, particularly in regard to the relations between trader and customer. The importance of such details of organisation as correspondence and telephone and the serious and generous treatment of complaints is well recognised to-day, and there is general agreement with the principle laid down by the lecturer that "the essential principle of commerce is that it shall be conducted, not as a contest between men out to best each other, but as a form of mutual service conducted for the reasonable profit of both parties."

SURTAX ON LIMITED COMPANIES.

The complexity of the law and practice in relation to surtax on limited companies seems to have a special fascination for Final Examiners, and it is therefore not surprising to find the subject occupying a prominent position in the Student Society's syllabus. Mr. H. A. R. J. Wilson, F.S.A.A., F.C.A., recalls the various methods of avoiding super tax which led up to the statutory provisions of 1932. Since that date endeavours have been made to close up various loopholes, not perhaps with entire and complete success. The procedure in regard to assessments to surtax on limited companies is examined, and special reference is made to the Board of Referees, which is a body of eminent men in business and commerce in the country, who are appointed for certain very special purposes, one of which is to hear appeals from the Special Commissioners in the case of surtax on companies. The old difficulty as to the position of a company which went into liquidation without having distributed its profits was largely disposed of in the Finance Act, 1927, but it is evident that avoidance by a process of liquidation has not been entirely eliminated.

SIR STEPHEN KILLIK.

A review of the work of the London Students' Society would not be complete without a special reference to the untiring energy of Sir Stephen Killik, J.P., who has been appointed President for the third year in succession. The great personal interest which he continues to take in the individual members of the Society and his successful endeavours to still further popularise the students' meetings do not exhaust his labours on behalf of Incorporated Accountants in general, and the students in particular. His lecture on "The Stock Exchange" is a clear and concise exposition of the machinery of that great organisation. The President's knowledge on this subject is very intimate, and readers will here find a consideration of the world-wide repercussions which arise from Stock Exchange transactions, and learn the precise relationship of jobbers and brokers.

The "Lectures and Transactions" are issued free to the members of the Students' Society, and can be purchased by others at the price of 3s. 6d.

Reviews.

Scientific Investment. *By Hargreaves Parkinson, B.A., B.Com. London: Sir Isaac Pitman & Sons, Limited.* (228 *pp. Price* 10*s.* 6*d. net.*)

This publication deals with the methods of gauging the values of investments of different classes, as, for instance, debentures, preference shares and ordinary shares, the idea being to arrive at results by means of a scientific analysis of accounts and other available information. Where possible the illustrations used are based upon the published figures of well known companies. The author suggests a technique for measuring equity shares by substituting an analysis of long term factors for the shorter methods usually adopted. Each class of investment is treated in a separate chapter and many useful hints are given with regard to the examination of balance sheets so as to extract therefrom the most useful information from the viewpoint of the investor. The book is well produced and contains much sound advice.

Cost Accounting and Costing Methods. *By Harold J. Wheldon, B.Com. London: Macdonald & Evans, 8, John Street, Bedford Row, W.C.*1. (412 *pp. Price* 10*s.* 6*d. net.*)

To supply the needs of students is the main object of this book, but being based upon many years' practical experience of factory work, it is not without its value in other directions. Information is supplied on many individual points and numerous worked examples are given. There is just a danger that in the wealth of detail the main principles of costing may be somewhat obscured; on the other hand the reader is not likely to search in vain for information upon any particular matter. Many methods of costing are touched upon, including process costs, terminal costs, operating costs and standard costs. Attention is also given to the use of mechanical appliances in connection with costing records and the subject of control accounts is fully explained and illustrated.

The Fundamentals of Process Cost Accounting. *By L. A. Wight. London: Sir Isaac Pitman & Sons, Limited.* (102 *pp. Price* 7*s.* 6*d. net.*)

This is a less pretentious book dealing solely with process costing and its application to different industries. The system outlined is based on practical experience and is designed to suit the requirements of both large and small factories.

Quicker Calculations for Accountancy Students. *By H. A. R. J. Wilson, F.C.A., F.S.A.A. London: A. W. Berkeley, Limited,* 28, *Basinghall Street, E.C.*2. (48 *pp. Price* 1*s.* 6*d. net.*)

Some very useful hints are given in this little book on quick methods of arriving at results by means which are simple and easily followed. Amongst the subjects treated are percentages, instalment payments, decimalisation of money, cost and selling price percentages, calculation and yield of investments and calculations in connection with Income Tax problems. Students will be amply repaid by a brief study of Mr. Wilson's suggestions.

Mr. Thomas Wood, J.P., F.S.A.A., has been selected for the appointment of Mayor of St. Helens for the year 1932-33.

Duties and Liabilities of Executors.

A LECTURE delivered before the Incorporated Accountants' Students' Society of London and District by

Mr. J. LINAHAN,
INCORPORATED ACCOUNTANT.

The chair was occupied by Mr. G. ROBY PRIDIE (Vice-President of the Society).

Mr. LINAHAN said: I propose to-night to attempt to deal with the principal duties and liabilities of an executor.

The office of executor is not one to be undertaken light-heartedly, as it involves, as a general rule, much worry and responsibility, with no corresponding advantages unless the testator has thoughtfully provided a legacy for the executor, or included in his will a clause empowering the executor to charge for his services. The only exception to this rule regarding remuneration arises where the Public Trustee is appointed. He has a statutory right to his fees by virtue of the provisions of the Public Trustee Act, 1906.

1. EXECUTOR'S LEGACY.

As no legacies can be paid until all debts, duties and administration expenses are paid, it may be that, in spite of the thoughtfulness of the testator in providing for a legacy to the executor, this will not be paid. The executor has no right to pay his own legacy in preference to other legacies. If, owing to there being insufficient assets the general legacies cannot be paid in full, the executor's legacy will—subject to any special provisions in the will—abate with the others *pro rata*.

2. THE BURIAL OF THE DECEASED.

It is the first duty of the executor to see that the deceased is buried in a manner befitting his station in life. In practice now-a-days, the funeral arrangements are usually made by the relatives. It is advisable that the will and codicils be carefully examined before these are completed, in order that any wishes of the testator as expressed therein may be respected as far as possible—although it has been decided that any disposition of his body made by a testator is void, his property in it ceasing with his death.

3. PREPARATION OF INVENTORY OF ESTATE.

This is the next duty to be undertaken. Sect. 25 of the Administration of Estates Act, 1925, provides that executors shall, when lawfully called upon to do so, exhibit in Court a true and perfect inventory and account of the real and personal estate of the deceased.

In practice the preparation of an inventory as such is not usually undertaken personally by the executor. He will usually find it desirable to instruct a competent valuer to prepare an inventory and valuation of the household goods, &c. This will be useful as a schedule to the estate duty account. In addition, the investments of the deceased as shown by his books and records will require to be valued for probate. Lists will be prepared and, where Stock Exchange quotations are available, the valuation made from the closing prices, as shown by a newspaper published on the morning of the day following the date of death, this being certified by a stockbroker as a rule in large estates.

Unquoted Shares.

As a rule, one endeavours to determine the value of these by writing to the secretaries of the companies concerned with a request for information as to recent dealings and a certificate as to the value for probate, but invariably further details and information are asked for in practice, so that the valuation is largely a matter of negotiation in practice.

Freehold and leasehold properties belonging to the deceased will require to be valued by a competent valuer, whose certificate should also accompany the schedule of assets attached to the Inland Revenue affidavit for estate duty. It is advisable in practice to arrange for the values of the properties to be agreed with the District Valuer before sending in the estate duty account wherever possible.

Assets such as mortgages and loans will normally be included at their face value, but cases may arise, in these days of depreciated values of properties, where loans on mortgage will not be fully covered and if the personal covenant is not likely to provide cover for the difference between the nominal amount of the loan and the value of the security the mortgage will have to be brought into account at a figure lower than the amount lent. In the same way, unsecured loans and I.O.U.'s due to the deceased may have to be "valued," having regard to the risk of bad debts and bearing in mind that the cost of recovery might exceed the amount due.

Cash in House and at Bank.

The former should be taken possession of by the executor at the earliest possible moment, and it is desirable to count it if possible in the presence of a beneficiary or independent witness, so that the best evidence of the accuracy of the amount may be available in the event of a dispute arising with the beneficiaries at a later date.

The balance at bank on current and deposit accounts will be ascertained by application to the bank manager and the figures agreed with the deceased's pass books and any records kept by him which may be available. If there is a large sum on current account the executor should arrange for this to be placed on deposit, so that the maximum interest may be obtained for the estate.

Moneys Due Under Life Policies.

These will be ascertained by application to the companies and checked with the policies and any records kept by the deceased.

In the case of life policy moneys and bank balances, it is usual to arrange for these to be collected before probate where large sums are involved in order to help to pay the estate duty.

The cheques in such cases are usually drawn in favour of the Inland Revenue Authorities, so that there is no risk of the executor's obtaining the money before probate and misapplying it. A letter of request and indemnity will be required from the executor, and his undertaking to produce probate for registration in the books of the life company or bank as soon as he obtains the grant.

Reversions.

If the deceased person was entitled to a reversion, that is, if he were entitled to succeed to some property under the provisions of a settlement in existence at the date of his death, or under the will of a person who had predeceased him, this represents property which will have to be disclosed to the Inland Revenue Authorities in connection with the assessment of estate duty. A statement of the present value of the interest in the property certified by an actuary should be obtained and attached to the estate duty account.

Cases frequently arise in which what might be called the tangible assets, such as investments, properties, life insurance policy moneys and cash balances, when aggregated, are of smaller aggregate value than the value of reversionary property. It would, therefore, involve great hardship if, when the papers relating to the estate

were placed before the authorities, it were possible for them to demand immediate payment of the estate duty on "reversions," as well as on the tangible assets. It is easy to imagine cases where, if this were the position, the demands of the Inland Revenue Authorities might equal, if not exceed, the value of the "tangible assets" themselves, so that the whole tangible estate would pass to the Inland Revenue Authorities.

It is therefore fortunate, from the executor's point of view, as well as that of the beneficiaries, that he has the right to exercise either of the following options:—

(1) To pay the estate duty on the value of the reversion as agreed with the authorities (in practice determined by an actuary), or

(2) To defer payment of the estate duty on the reversion until the reversionary property comes to hand.

If the second method is adopted, the estate duty ultimately payable will be calculated, not on the actuarial valuation of the property, as at the date of death of the deceased, but on the amount that is ultimately received in respect of the reversion.

As a rule, the actuarial value as at the date of death will be much lower than the amount which is ultimately received. The chief disadvantage in practice of adopting the second method is that, by reason of the larger value being dutiable, the scale rate of estate duty ultimately payable may be higher.

For example: Tangible estate, £4,000 estate duty at 4 per cent.; Reversion (actuarial value), £6,000 estate duty at 4 per cent., if method (1) adopted; total, £10,000.

Assume reversion falls in six months later and is found to be represented by cash, £6,200: if method (2) has been adopted the estate duty on the reversion will be 5 per cent. on £6,200, the 4 per cent. paid on the tangible estate remaining unaltered.

In cases where method (2) is adopted and the rate payable on the property falling in is raised in the manner shown in the example I gave, there is no question of additional estate duty being payable on what I described as the tangible assets.

It is necessary for the executor to use great care in deciding which of the options he shall exercise. Quite properly the Inland Revenue Authorities will refuse permission for him to "change his mind" should he find afterwards that it would have been more to the advantage of the estate had he acted differently.

Obtaining the Grant of Probate.

Probate is the proving or establishing of the contents and validity of a will. It will not be granted until the estate duty on the personal estate is paid. As soon, therefore, as the preparation of the estate duty affidavit and schedule of assets can be completed, they should be lodged with the Inland Revenue Authorities in order that the estate duty payable may be computed. The estate duty on the real estate need not be paid at once, and may, in fact, be deferred until the end of the executor's year or, if desired, it can be paid by instalments spread over eight years, interest being charged at 4 per cent. on the amount outstanding as at the end of the executor's year. If, however, any portion of the real estate is sold, the estate duty on that portion becomes payable immediately.

The following papers must be produced when an application for probate is made: (1) The affidavit for the Inland Revenue and the estate duty account, showing the deceased's property, supported by schedule and valuations: (2) the original will and any codicil or codicils, which the executor must swear he believes to be the true and last will of the testator; (3) the Registrar's certificate of death or an official certificate of burial; (4) the executor's oath to administer the estate faithfully and well.

In practice these papers will have to be left with the authorities for a few days for examination. If everything is found in order, the executor or his representative will be notified and asked to attend and take delivery of the grant. This will consist of a photographic copy of the will authenticated by the seal of the Probate Court. This is the official evidence of the executor's title and will in due course require to be registered with the companies in which the deceased was interested as a share or debenture holder in order that dividends and all communications relating to the deceased's interest in the company may be sent to the executor in future. Needless to say, it should be preserved with great care, being the evidence of the executor's title.

Proof in Common Form.

This is the method most usually adopted in practice, and the application for proof should be made to the Principal or District Registrar, or, in certain cases, to the Collector or Supervisor of Inland Revenue.

Proof in Solemn Form.

One of the disadvantages of proving a will in common form is that an executor may, within a period of 30 years, be called upon to prove it in solemn form. It is therefore advisable in all cases where there is a dispute or possibility of dispute as to probate to prove the will in solemn form in the first instance. The proceedings in such a case take the form of an action, and all parties interested are cited to appear. The witnesses are examined on oath and the Court decides as to the validity or otherwise of the will.

Trusts of Which the Deceased was Executor.

If the deceased was a sole or last surviving executor of someone else's estate, the duty of carrying on the administration of that estate devolves on his executor.

In the same way, if the deceased was the surviving executor of those who had proved the original testator's will, he becomes, by virtue of his office, executor of the estate in which the deceased acted, but if there is another executor of the original testator who has not proved the will of that testator and is now willing to accept the office, it will be transferred to him and the executor of the executor will in this case be relieved of the work of administering this additional trust.

People who are asked to act as executors of their friend's wills and who consent do not realise that they may thereby become executors of the estates of other people of whom they had no knowledge, and possibly of people of whom they have never heard, should the testator for whom they consent to act happen to have been a sole or last surviving executor himself at the date of his death. It is unnecessary to obtain the previous consent of a person upon whom one wishes to inflict the duty of winding up one's estate, but as the person appointed is not obliged to act, even if he has agreed to do so, it is advisable to notify him and obtain his concurrence before completing the will, under the terms of which the appointment is made.

It is not possible for an executor to accept in part and renounce in part, so that, if he finds his testator was sole or last surviving executor of other people's estates and he does not wish to be embroiled in these, his only course is to renounce the office of executor entirely, and this he must do before intermeddling in the estate. In other words, if he has done any act which shows an intention of acting as executor, such as advertising for

claims to be sent to him by creditors of the estate, he will be deemed to have accepted the office with all its implications, and he cannot afterwards withdraw from it.

GETTING IN THE ESTATE.

Generally speaking, it is the duty of the executor to convert the estate into cash unless the will shows a contrary intention. If, however, in practice the estate is immediately distributable, it is usual to avoid conversion except where there are a number of beneficiaries and to arrange for the investments and other property to be transferred to them. It is obvious that those cases in which the estate is not immediately distributable, *i.e.*, where a life-tenancy arises, cause much more difficulty in practice. Various equitable apportionments may become necessary should there have been delay in paying the debts and legacies, and should investments have been retained which are not authorised by the will.

As he is accountable for the estate, the sooner he can get his title registered (by means of the probate) and the control of the estate in his hands the better, if the executor wishes to avoid being held liable for *devastavit*, *i.e.*, wasting the estate.

PAYING OF DEBTS.

Unless he is satisfied that the assets are more than sufficient to pay all debts, duties and administration, &c., expenses in full, the executor should pay the debts strictly in the order in which they rank for payment. That is the order in which the claims against the estate are payable where it is solvent.

In the case of insolvent estates the order is as follows: (1) The funeral, testamentary and administration expenses have priority; (2) all debts are payable in the order laid down in the Bankruptcy Act, 1914, debts and liabilities, whether contracted for value or not, ranking *pari passu*.

EXECUTOR'S RIGHT OF PREFERENCE.

Unless and until a decree for administration is made by the Court, the executor has the right to pay one creditor before any other of the same class.

EXECUTOR'S RIGHT OF RETAINER.

An executor to whom a debt is due from the estate has the right to pay his own claim in preference to all other creditors of the same class. If a petition for administration is presented, the executor can still pay his own debt in preference to other creditors of equal degree out of moneys in his hands when he receives notice of the presentation of the petition.

PAYING LEGACIES.

Not until he is satisfied that all debts, duties and administration expenses can be paid in full may an executor proceed to pay legacies. As between the beneficiaries and the estate there is a certain order in which the property of the deceased has, subject to the provisions of the will, to be applied in paying debts due from the estate (see Administration of Estates Act, 1925, 1st Schedule, Part 2). This order does not bind the creditors, so that a creditor whose debt is unpaid may proceed to attach any portion of the estate he pleases in satisfaction of his claim. He is not bound to ascertain whether that portion of the estate is specifically bequeathed to a particular legatee. The executor is left with the duty of straightening matters out with the legatee in question. The important point which will be borne in mind by the executor during the "straightening-out" process is that specific legacies are payable in preference to general legacies. There can be no question of a specific legatee's right in such circumstances to insist upon anything approaching "specific performance," such as arises in connection with contract law. His right against the executor is for the pecuniary value of the specific legacy which the creditor has attached.

PROCEDURE IN PAYING LEGACIES.

In practice it is usual in paying legacies to send in for assessment on the official forms particulars of the—

(*a*) Nature of the gift;

(*b*) Name of beneficiary;

(*g*) Relation of beneficiary to testator.

On these forms the duty is assessed by the authorities, and when paid an official stamped receipt is impressed. The executor being the accountable person for legacy duty on all legacies, it is usual in practice wherever possible to pay the legacy duty before paying or handing over the legacy. This avoids any risk of the penalty which can be exacted should the legacy duty remain unpaid 21 days after the date of the receipt for the legacy.

It is also a usual practice to ask the legatee to sign the official form of receipt for the legacy which appears on the back of the Inland Revenue official form. In addition, it is desirable to ask the beneficiary to sign in the presence of a witness who should be a responsible person who is in a position to vouch for the identity of the beneficiary.

LEGACIES TO INFANTS.

These are of two main classes:—

(A) *Contingent.*

Now, unless he pays these into Court, the executor will have to retain sufficient funds to meet the legacy should the contingency happen, and unless he pays into Court his executorship cannot therefore be terminated till the legacy either (i) fails through death of the infant during minority, in which case the property will pass to somebody else; or (ii) becomes payable on the fulfilment of the condition attached to the bequest.

(B) *Absolute or Vested.*

Prior to 1926 the only safe way of dealing with vested legacies to infants was to pay them into Court. This method is still available. In practice, such legacies were frequently invested, but if the executor wished to escape possible liability it was necessary when this was done to obtain an indemnity to cover his liability should the investment depreciate before the legacy could be paid. In such a case the executor was still liable to be called to account, and it all depended on the value of his indemnity as to whether, in the long run, he was personally out of pocket in cases such as these. Unless there were special provisions in the will, it was the duty of the executor to preserve the legacy intact till the child attained the age of 21, before which date a good receipt could not be obtained by the executor. The legatee was also entitled to interest which it was expected would be earned on the legacy; placing the money on a deposit account at a bank was not an authorised means of dealing with the legacy during the infancy of the legatee.

LEGACIES TO PERSONS ABROAD.

There is an impression that should a legatee be unfortunate enough to be out of the country, either permanently or temporarily (possibly on holiday), at the time when the executor is ready to pay the legacies, the legacy to the person abroad *must* be paid into Court.

This is not the method followed in practice. If the legatee can be traced and satisfactorily identified, he can be paid by draft through a British bank with foreign or Colonial branches or agents.

It frequently happens that a beneficiary cannot be

traced, and it then becomes necessary for the executor to take advantage of the power given him to pay legacies into Court. Before the Court will receive the money, however, it will insist upon certain advertising being effected by the executor with a view to tracing the beneficiary. After this has been carried out as directed by the Court, should the beneficiary remain untraced, the Court will authorise the executor to pay the legacy to the Bank of England to be held to the order of the Court. In this way the executor obtains a discharge in respect of the legacy. Should the beneficiary afterwards claim his legacy, he will have to apply for it to be paid through the Court and the expense of getting the money out of Court will fall on the beneficiary.

"DONATIONES MORTIS CAUSA."

These are somewhat akin to legacies, the chief difference being that they do not become payable by reason of provisions of the will. Gifts of this nature require careful reviewing by the executor. To be effective possession or means of obtaining possession must be given during the testator's life-time. In addition, certain property is incapable of being made the subject of a valid *donatio*.

Recently I came across a case where the deceased drew and gave away certain cheques. Only one of these was paid during his lifetime, the others being presented too late for payment, notice of the testator's death having been received by the bank. Incidentally, one of the unpaid cheques represented an amount intended to be given to certain people abroad. The recipient of the cheque, not realising the importance of cashing it immediately, sent off his own cheques to the people abroad. His own cheque was returned unpaid and the executor was advised that the gift was invalid, and that there was no means of making good out of the estate the amounts disbursed by the recipient of the cheque. The remedy in the case of this individual was to recover the amounts he had paid from the persons abroad.

EXECUTOR'S YEAR.

Although he is given the period known as the executor's year, during which it is expected that he shall, if possible, pay the debts and legacies and ascertain the residue, it is clear from sect. 44 of the Administration of Estates Act, 1925, and cases where the point has been considered from time to time, that an executor is expected to use all possible expedition in winding up the estate and not to defer its completion till the end of this year if it is possible to wind it up at an earlier date.

This executor's year is very useful where the estate is a difficult one, *i.e.*, where there is the possibility of large claims arising or the necessity for abatement of legacies and/or annuities. In such a case the executor would be quite within his rights in refusing to pay any legacies till the end of his "year."

If at the end of that period he is still uncertain as to the position he is entitled to a further extension of time, but in the case of large trusts he would probably be well advised to obtain instructions from the Court should the legatees commence to press for payment.

THE MAKING OF INVESTMENTS.

If the estate is one in which a life-tenancy arises or annuities are payable, the executor will have to make the necessary investments from which the income of the life-tenant or annuitant will be derived.

The executor is entitled to obtain and pay for the best advice it is possible to have in connection with this matter of investments. The cost of obtaining advice will be chargeable against the estate. Points he will have to consider are :—

(1) Does the will restrict investments to those mentioned in the Trustee Act, or covered by the provisions of the Colonial Stock Act ?

(2) Does the will lay down a particular class or classes of investments in which, and in no other form, the estate must be invested ? If the will stipulates that the estate shall be invested in a particular manner and in no other manner, the purchase of trustee investments (unless they come within the provisions of the will) will not protect the executor. He will be liable for the loss on any which are subsequently realised for less than their cost price, while if appreciation should occur, the estate will reap the benefit, the executor being therefore liable for gross losses.

(3) Does the will authorise—

(*a*) temporary,

(*b*) permanent

retention of investments purchased by the deceased which are not covered by the investment clause of the trust ?

(4) If the will authorises the executor to invest in trustee investments, he must use a proper discretion, and if, owing to special circumstances, a particular trustee investment happens to be yielding, say, 12 per cent. or 13 per cent., it does not follow that in buying it the executor will escape liability.

(5) If the will authorises temporary or permanent retention, does it also permit of the whole of the dividends being regarded as income, and therefore available for payment to the life-tenant, or will some portion of the dividends have to be added to the capital account under the *Howe* v. *Lord Dartmouth* rule relating to equitable apportionments ?

THE DISTRIBUTION OF THE RESIDUE.

The general rule in regard to legacies is that if the legatee dies in the lifetime of the testator the gift lapses and the residue benefits to that extent.

There may, however, owing to accident or design, be a question of undisposed of residue. This would arise if the deceased omitted to deal with the residue or some portion thereof by the provisions of his will.

The general rule is that if a share of residue lapses it constitutes an intestacy, or rather a "partial" intestacy arises. Similarly, residue not disposed of by will represents a partial intestacy, which will be distributable according to the rules laid down in the Administration of Estates Act, 1925.

In practice, it will depend on the provisions of the will as to whether the debts due by the deceased shall be paid out of the general residue before its division into shares—one of which may be undisposed of—or out of a share of the gross residue which remains undisposed of.

Subject to this deduction for debts, the surviving spouse, if any, will take the first £1,000 and the personal chattels. Also a life interest in the undisposed of residue if there is no issue ; if there are issue, a life interest in half of this undisposed residue. If issue survive, they will take a moiety of the undisposed of estate, but will have to bring into account any benefits derived under the will, and on the surviving spouse's death they will take the other moiety. The surviving spouse is not liable to bring into hotchpot benefits received under the will.

KEEPING OF ACCOUNTS.

No statement of the executor's duties, or principal duties, would be complete without reference to the

important duty of keeping accounts. If he is not capable of keeping them himself, he is entitled to employ an accountant to do so at the expense of the estate. Failure to keep accounts may well render the executor liable to pay personally the costs of any investigation undertaken to satisfy the beneficiaries, and with a view to supplying them with the accounts of the executor's dealings to which they are entitled.

The accounts should be kept up to date, so that they can be inspected by beneficiaries and all trust moneys should be dealt with through a trust bank account, and not merged with the executor's own moneys.

THE LIABILITIES OF AN EXECUTOR.

In the text-books one finds much more is said about the duties of an executor than about his liabilities.

In practice, the executor will be wise to spend some considerable portion of his time in a study of the liabilities which may arise in connection with his office. These are extensive.

I cannot attempt to deal fully with them all this evening, and will therefore concentrate on what appear to be the most important.

Accountability and Chargeability of Executor.

He is accountable for the whole estate; that is to say, he is liable to be called upon to show what has become of it.

He is chargeable with such parts of the estate as have come into his possession, or might have done so if it had not been for his negligence. Included in the estate with which he is chargeable is the income or produce of the property as at the date of death, as well as what might be described as the tangible assets.

Liability for Devastavit.

If the executor is guilty of misconduct or negligence in getting in the estate, and as a result a loss falls on the estate, he is liable for this loss. Also, if he is guilty of rashness in his administration of the estate he will be liable for the loss incurred as a result.

Default by Co-Executor.

Not the least of his liabilities is that for default by his co-executor. This can only arise as a result of negligence, *i.e.*, where he allows his co-executor to get possession of the estate or some portion and fails to see to its proper application.

Breach of Trust.

Perhaps the most important of these is his liability should he, in the course of his duties, commit a breach of trust.

If, for example, he purchases ordinary shares in the X Co. and is by the terms of the will restricted to trustee investments or debentures of trading companies, he will be responsible for making good any loss this action on his part may occasion to the estate.

In the same way, if he mixes up trust moneys with moneys of his own, or uses trust moneys in his own business, he will be liable at the option of the beneficiaries either for the profits the use of these moneys has enabled him to make, or else for interest on them at 5 per cent. per annum.

If he lends money to himself at a lower rate of interest than could be obtained with equal security, he will be liable for the difference in interest.

If he lends money on mortgage of real estate or very long leasehold property, he may incur liability if the loan exceeds two-thirds of the value of the security at the time the money is lent. He will therefore be well advised to take advantage of the statutory power vested in him of employing an independent surveyor on the faith of whose certificate as to value an amount not exceeding two-thirds of that value can safely be lent.

It is sometimes overlooked that in the absence of special powers given in the will money cannot be lent on the security of leasehold property unless the lease has at least 200 years to run and the ground rent does not exceed 1s. per annum.

Failure to Invest Moneys.

Executors have been held liable for failing to invest moneys not required for the payment of debts, legacies, &c. Several of the decided cases on the point have been fought on behalf of infant beneficiaries for whose benefit income not required to meet the costs of maintenance must be reinvested, so that the benefit of compound interest may be obtained.

Carrying on a Business.

The general rule is that the business of the deceased is put an end to on his death, and if the executor carries it on he should do so only temporarily until it can be would up beneficially or realised as a going concern. The executor is personally liable to creditors with whom he incurs debts, and he may if necessary be made bankrupt in respect of business debts. He has a right of indemnity against the estate for liabilities he incurs while carrying on the business temporarily for either of these purposes. If, however, the business is carried on permanently, the executor has no right of indemnity against the estate unless the will authorises him to carry on the business for an indefinite period. In the latter event it will depend on the terms of the will as to whether the executor's right of indemnity extends only to the assets used in the business or whether it also extends to other property forming part of the deceased's estate.

Liability in Respect of Debts Due from Deceased.

If the executor exercises reasonable care there should be no question of his becoming personally liable for the debts of the testator. He should take advantage of sect. 27 of the Trustee Act, 1925, before paying any but the most urgent claims. This section allows an executor, at the expense of the estate, to advertise for the claims of creditors of the estate to be sent in before a date not less than two months following the date of the advertisement. It also provides that on the expiration of that period the executor may proceed to distribute the estate, regardless of any claims of which he has no knowledge. He may not rely on claims sent in by creditors in response to his advertisement. He must examine the books and papers of the deceased and, if they show that claims exist, the executor will be deemed to have notice of the liabilities, and he would not, therefore, be safe in ignoring or disregarding such creditors should they fail to send in claims against the estate in writing.

Unless the estate is solvent, the executor should never pay a claim of lower order before settling those of higher degree. If he does he will be deemed to have admitted assets sufficient to meet the higher degree claims, and will be personally liable therefor. His proper course when sued in such circumstances is to plead that he has no assets in hand to satisfy claims other than those specified in his defence; the creditor may then obtain judgment to be satisfied in the due course of administration. If a debt is due to the executor himself, he should plead this if the debt due to the creditor who sues is of equal or lower rank with his own claim. If he fails to plead this right of retainer, he will be deemed to have waived it as far as that particular creditor is concerned.

Contracts Made by Deceased.

While as a general rule these are binding on the executor, he is not liable on those which were of a purely

personal nature where the deceased's personal care or skill was essential for their performance. The standard example, you will recollect, is that of the testator who had contracted to sing at a concert, but died before the date of the concert.

Leaseholds.

In cases where the testator was the original lessee, provided the executor satisfies all liabilities and claims already accrued due up to the date of assignment and sets aside a sufficient reserve fund to meet any future claims in respect of fixed and ascertained sums covenanted to be expended on the property at some future date, the executor may sell or assign leasehold property which forms part of the testator's estate without fear of further liability.

In distributing an estate of a testator who had dealings with leasehold properties, it is desirable that before a final division takes place steps should be taken to see that sufficient provision has been made to cover liabilities which may arise after the testator's death. If this is done and the executor has advertised for claims to be sent in against the estate, he will not be personally liable in respect of leaseholds disposed of by the testator. This is without prejudice to the right of the ground landlord to follow the assets into the hands of beneficiaries.

A method sometimes adopted in practice is to take out a single premium policy providing for the payment of sufficient to cover any claims which may subsequently arise. This could only be done where the beneficiaries were of age and agreed to the transaction unless the necessary power were given by the will or by the Court.

Liability for Torts.—Breach of Trust Committed by the Deceased.

The executor is liable to be sued for breaches of trust committed by the deceased whilst acting as trustee or in a similar capacity. If he is unaware of any such breaches and he has advertised for claims to be sent in as provided by sect. 27 of the Trustee Act, 1925, he cannot be sued after the estate has been wound up. This does not, however, prevent the assets being "followed" into the hands of beneficiaries by the person entitled to sue.

Liability to Pay Debt Due by Him to the Deceased.

It is a principle of law that a man cannot sue himself, and therefore if a testator appoints as his executor a person who owes him money, the debt is wiped out. This does not operate as a form of executor's legacy, as might appear at first sight, because, although the legal position is as I have stated, equity demands that the executor shall pay; he is a trustee for his own debt and equity assumes the executor has done what equity says he ought to do, *i.e.*, paid his own debt. His only relief is to produce evidence (if he can) that it was the intention of the testator to forgive the debt.

EXECUTOR'S RELIEF FROM PERSONAL LIABILITY FOR BREACH OF TRUST.

Sect. 61 of the Trustee Act gives power to the Court to relieve a trustee from personal liability for any breach of trust where it can be satisfactorily proved that—

(1) He has acted honestly and reasonably;

(2) He ought fairly to be excused.

This includes cases where he ought to have obtained the directions of the Court, but omitted to do so before taking the action which resulted in the breach of trust, and the Court is satisfied that the case is one in which relief should be granted.

Discussion.

The CHAIRMAN: We have listened to a lecture on a subject which, as our daily professional experience teaches us, overflows with points of real and live interest. I congratulate our Lecturer, Mr. Linahan, on the skill with which he has touched on practically the whole gamut of liabilities and pitfalls relative to the duties of executorship. Practically in every individual case you will find some point arise of peculiar and unexpected interest, and it is most essential that you should read the will very carefully and take particular note of its wording. You must also bear in mind human nature, as it is by no means certain that all the beneficiaries will be of a non-quarrelsome type. A year or two ago I was dealing with a very large estate, and the testator's will had several curious and complicated provisions. There was one provision which, in fact, the executors were unable to carry out. The testator, after making various provisions, left his widow the right to choose within three months of his decease any article, primarily pictures or treasures, that she desired, not exceeding the value of £300. The widow only survived her husband for a few days; in fact, she died on the day of his funeral. She owned an estate in her own right and made a separate will. The trustees of the male testator were three, of whom I was one, and the trustees of the widow's will were two, one of whom was common to both wills. The widow's estate was not very large, and the executors were all friendly; it was therefore suggested, and as a matter of fact agreed upon, that the executors of the original testator should allow the executors of the widow to make the choice that the widow herself was unable personally to carry out, in order to benefit her estate to that extent. However, one of the beneficiaries of the husband's will objected to this procedure, and also incidentally to the executors' interpretation of certain other provisions of the will. The executors, therefore, had to apply to the Court for an interpretation of the will, and the Court laid down that the widow's right of selection was essentially a personal right that could only be exercised by the widow herself and was incapable of being delegated to her executors or to anyone else, with a consequence that the executors of the original testator were unable to pass the benefit on to the widow's estate. The original testator also left an annuity to his widow for "the remainder of her life," and another to his grandson, of, I think, £2,000 a year. Now, the wording of the clause governing both these annuities was all in one line, and one of the residuary beneficiaries raised the objection that the length of life referred to covered both the widow and the grandson, and therefore the grandson was only entitled to his £2,000 a year for a period of seven days. The Court ruled against that contention. On the question of not being in too great a hurry in destroying old papers, I will give another illustration. There was a mortgage due to a testator, who was also liable to the borrower for certain work the borrower had done for the testator, and eventually it was agreed to use the debt as a partial set-off against the mortgage liability. In the course of four or five years the mortgaged property was put up for sale and the executors called in the loan; then the borrower put forward a contra claim for several hundred pounds which he said he had advanced to the testator. In the ordinary course, an advertisement for all claims to be sent in had appeared some three years prior to this, but the claimant in question had made no response. One of my co-executors then turned up some old records, something like twenty-five years old, and he came across a signed acknowledgment, showing that, instead of the claimant having a right to call on the testator for £600, the testator could call upon him for £1,100, and a settlement on these lines was effected. So do not destroy old papers. There was one point that the Lecturer did not touch upon. I believe it is recognised that should there be any question of back duty in respect of income tax, the penalties attaching to such cases do not pass on to the executor.

I believe I am right in saying that, but the Lecturer will correct me if I am in error.

Mr. W. ADDISON, Incorporated Accountant: I would like to ask the Lecturer if he has ever had a case like this. I assume there are many here who have had cases that are curious and do not often arise, and therefore we may be of use to one another. A life-tenant mortgaged two or three reversionary interests and in course of time became bankrupt. The trustees of a related trust not mortgaged went into Court and purchased the reversions from the lenders of the money and acquired all the interests that were mortgaged. After the life-tenant's death the estate was to go to the children. The children are of age. The point is, must those trusts be carried on still, although the lady has parted with all interest in them, or will the trustees be entitled to assume that being bankrupt and parting with all interest is equivalent to her having died? There is one other point that is of interest to me. Accountants have to acquire a good knowledge of executorship law; indeed, in my personal experience many accountants know a great deal more about it than members of the legal profession. The Lecturer mentioned that an executor can either prove the will personally or by an agent. I should like him to give us the benefit of his extensive experience in that direction—as to whether the agent is confined to any particular class of the community?

Mr. W. C. RING: In the case of an intestacy where a sum of, say, £4,000 is left, is it possible for the children to sign away their shares; as otherwise it might react to the detriment of the widow, if she has to live on her share of income only?

Mr. V. A. CLAVERLEY: In a case where much of an estate has been distributed, leaving a small margin to produce income for remaining annuities, if the accruing income proves insufficient to provide for these annuities owing to high taxation and other fluctuating causes, and the executor has to make up the deficiency, is he entitled to recover such sum immediately, or upon the next distribution of capital, or not at all?

Mr. B. FRANKLIN, LL.B.: I appreciate the fact that the Lecturer could not cover all the points he would like to cover, but there are one or two questions I would like to ask him. The executor must not make any profit out of the executorship unless the will permits him to do so—he is not entitled to any remuneration. I should like to know whether he is entitled to any out-of-pocket expenses for travelling, interviewing people, going to the bank, and time taken up by various matters? Secondly, there is one duty laid on the executor—I do not know whether the Lecturer mentioned it—when the statement of deceased's assets is submitted to the Inland Revenue Commissioners. I think that statement must be deposed to before a Commissioner of Oaths—that is one of his important duties. Touching on reversions, if the Lecturer would not mind, I would like some sort of definition of the term "reversion." Presumably, there are three parties involved—the settlor, the life-tenant and the person entitled on the death of the life-tenant. If there were several reversions, I am wondering how they would be valued. Payment of estate duty may, of course, be deferred, but where there are several reversions, each of them will have to be valued at the date it falls in, and how will they be aggregated for rate for estate duty? That will involve a lot of complicated calculations. Another point is, has the executor any liability in connection with gifts *inter vivos*? If a testator within three years of his death made gifts to people who are liable for estate duty, has the executor any liability in respect of that estate duty?

Mr. GRIFFITHS: There are three points upon which I should like a little light. The first is, how far may cheques not presented at the date of death be regarded as payable by the estate? They might be in the nature of regular allowances made to dependants, or something of that kind. Then, if one of the executors misapplies money which comes into his hands, how far would the other executors be liable? They might not know of the existence of those moneys, and they might have taken all reasonable precautions in dealing with such moneys as they knew about. Thirdly, I heard of a case in which a bank required the signatures of all the trustees to cheques drawn on the trust banking account. Are they entitled to require all the signatures?

Mr. T. L. LOCKETT: May I ask just two questions? Where an executor does not elect to pay estate duty on an actuarial valuation of a deceased's reversionary interest, is the completion of his executorship delayed until after the death of the life-tenant, or is the person ultimately entitled to the reversionary interest responsible for the duty after the death of the life-tenant? Secondly, in the case of leasehold property—assuming the lease had ten years to run and a person unaware of this fact advanced money on mortgage for a period of fifteen years and the ground landlords took possession at the expiration of the lease, has the executor or mortgagee any rights against the lessors?

Mr. N. BENNINGTON: Life insurance policies often provide for a lump sum at death and, in addition, an income for the widow during the remainer of her life. Has this income of the widow to be taken into account in valuing the policy for the purpose of duty on the husband's estate? If so, how would the income benefit be valued?

Mr. LINAHAN: The first question was, I think, put by Mr. Addison, as to a life-tenant with a mortgaged reversionary interest in course of time becoming bankrupt. The trustees went to Court and purchased the reversions. On the life-tenant's death the estate was to go to the children. The point was, must the trusts be carried on, and will the trustees be entitled to assume that the bankruptcy was equivalent to being dead? Under the terms of the will there might be some provision with regard to the life-tenant's interest ceasing on bankruptcy, which would have to be observed. If a man purchases a life interest he is only entitled to that life interest, and, subject to there being any provision determining the life-tenant's interest on his bankruptcy, the trusts would have to be carried on until the widow's death, when the capital would be distributed amongst the children. As to the other question put by Mr. Addison, as to whether there was any restriction as to the agent who could apply for probate—generally speaking, these agents are members of the legal profession, but it is not essential that one should prove a will through a member of that profession. A question was asked with regard to children signing away their shares in an intestacy. There is nothing to prevent children in such cases from selling or borrowing on their ultimate shares provided they are of age. They could therefore waive their interests in favour of the widow. Mr. Calverley raised a question with regard to annuities. It is the duty of an executor to make full provision for annuities, and if he fails in his duty in that respect he can be proceeded against in the Courts. I think his liability in the case stated would be a personal one in the first instance, but he would be entitled to recover from the residuary legatees to whom he had made remittances the amounts he had to find. With regard to an executor's not being entitled to remuneration unless it is provided in the will, that does not deprive him of his out-of-pocket expenses. An executor is always entitled to his out-of-pocket expenses, but he must not charge for his time. The Inland Revenue affidavit is sworn before a Commissioner of Oaths and the executor has to declare that the will he is attempting to prove is the true and last will of the testator. Then there was a question asked with regard to reversions. There are three parties involved: the man who made the original settlement, the life-tenant and the ultimate beneficiary. Such an estate will not fall into possession until the life-tenant dies. If there are several reversions, each of them has to be dealt with separately; that is to say, you would require a separate

actuarial valuation of each of them, the aggregate being included in the value of the general estate for the purpose of determining the rate of duty payable on what is called the free estate. If one decides to postpone the payment of the duty on the reversions, it is the amount that falls in when each reversion comes to hand that is subsequently dutiable. As regards an executor's position in respect of gifts *inter vivos*, I am asked if the executor has any liability for the estate duty. His liability does not extend to gifts *inter vivos*, because they represent property which does not come into his hands, but he has to make a declaration of them to the authorities. The Inland Revenue Authorities will proceed to assess the estate duty on the person who has received the gifts. As to how far cheques which were not presented at the date of death can be included as debts, I understand they must represent claims which are properly deductible for estate duty purposes; voluntary payments and debts not incurred for valuable consideration are not allowable deductions. As to what happens in the case of misapplication of funds by an executor, a good deal will of course depend upon the circumstances. Clearly, if one executor has been leaving matters entirely to his colleague he will not be able to escape liability; on the other hand, it must be remembered that one executor has full power to deal with personalty. One executor can give a receipt for personalty, but he is the person who is accountable and who must show what has been done with that property. It is the general rule, where there are several trustees, to arrange for cheques to be signed by at least two of the trustees, but it is a technical breach of trust for one trustee to delegate to others his right to sign. If there are three trustees they generally arrange that cheques will be properly signed if any two of them sign, and banks agree to that arrangement when it is confirmed by all the trustees. With regard to the question about some leaseholds that had only ten years to run, on the security of which somebody lends money, I cannot understand how the particular point could arise in practice. One is not likely to lend money for a fixed term which exceeds the period of the lease, owing to the necessity for investigation of title which must precede a loan. With regard to the question about life policies, where a lump sum is payable as well as certain income benefits, generally speaking there is an option in such contracts to receive a certain lump sum as an equivalent of the value of the policy, and in such cases it is on that lump sum that duty is payable. In difficult cases one might have to approach the insurance company and ask them to give a certificate as to the valuation of the police at the date of the death of the testator, and on this estate duty would be payable, the legacy duty, if any, being calculated in accordance with the tables in the Succession Duty Act, 1853. I am sorry I did not deal with the point about an executor not being liable for penalties. If the deceased has made fraudulent returns and could have been made liable for penalties had he lived, the executor is not liable for those penalties; he can only be made to pay the actual amount of the income tax and surtax that is outstanding.

Incorporated Accountants' Students' Society of London and District.

Sir Stephen Killik, J.P., the President of the Incorporated Accountants' Students' Society of London and District, and Mrs. Stanley Greenland will be at home to members at Incorporated Accountants' Hall, Victoria Embankment, W.C., on Wednesday, October 5th, from 5 p.m. to 6.15 p.m. (immediately preceding the lecture to be given by Mr. Maurice Share, B.A., on "Recent Developments in Mercantile Law").

Correspondence.

PROVISIONS IN COMPANIES' ARTICLES.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—Can any of your readers inform me of the correct position at law as regards the following:—

1. A company's Article provides that an interested director, notwithstanding his interest, shall form a quorum of the meeting at which the contract or arrangement in which he is interested is considered. It is desired to know whether a director can validly form a quorum of meeting of directors consisting of three members, where the prescribed quorum is fixed at three, though of course, by reason of the provisions of the Companies Act, he cannot vote? Is such an Article legal? Does it not nullify the effect of the provision of the Act, that an interested director shall not vote on propositions in which he is interested?

2. A company's Article provides that proxies shall be lodged at least two days before the meeting. A meeting is fixed on Wednesday. It is desired to know whether, in absence of an express provision in the Articles of Association that Sunday or a public holiday shall not be considered as *dies non*, proxies to be validly lodged should be deposited with the company on Monday or Saturday, Sunday being considered as *dies non*?

3. A company's Article provides that the managing director shall be entitled to a commission at a fixed rate if the company declares a dividend exceeding a certain percentage. It is desired to know from what date the commission accrues to the managing director—from the date the company at its general meeting sanctions the required dividend, or, retrospectively, from the last date of the last financial year of the company in respect of which the commission is paid?

I am, Sirs,
Yours faithfully,
ARCADIA.

LANDLORD'S DISTRAINT ON HIRE-PURCHASE GOODS.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—My attention has been drawn to an article under this heading in the August number of the *Incorporated Accountants' Journal.*

The article contains no reference to the recent case of *Smart Brothers, Limited*, v. *Holt and Others* (1929, 2 K.B., 303), where an ingenious attempt was made to avoid the defects disclosed in *Jay's Furnishing Company* v. *Brand & Co.*

In *Jay's* case the agreement provided that if the terms thereof were not performed, the same should *ipso facto* be determined "and the owners shall be entitled to retake possession . . . and for that purpose to enter upon any premises. . ." This clause resulted in the goods being still "comprised in any hire-purchase agreement," Buckley (L.J.) saying, "I apprehend that chattels remain comprised in an agreement when there is still subsisting some contractual obligation under the agreement *relating to the chattels*" (1915, 1 K.B., 465): Phillimore (L.J.) came to the same conclusion, and added, "I do not say that the fact that certain contractual rights remain, as, for instance, the right to payment of rent or of damages for breach of the agreement would necessarily cause the goods still to be comprised in a hire-purchase agreement."

In *Smart's* case the agreement provided that in case

of any breach of any term thereof the owners might "8 (*a*) Without prejudice to their claim for arrears of instalments or damages for breach of this agreement forthwith without notice terminate the hiring and repossess themselves of and remove the goods: (*b*) Alternatively, by written notice sent (by post or otherwise) to or left at the hirer's last known address forthwith and for all purposes absolutely determine and end this agreement and the hiring thereby constituted and thereupon the hirer shall no longer be in possession of the goods with the owners' consent, nor shall either party thereafter have any rights hereunder, but such determination shall not discharge any pre-existing liability of the hirer to the owners."

The hirer fell into arrears with his instalments and so notice was served on him under Clause 8 (*b*): "We beg to inform you that we have this day terminated our agreement with you. Our van will be calling upon you within the next few days to collect the whole of our goods. Will you please have them in readiness for our van to collect."

It was held that Clause 8 (*b*), though providing that rights of a personal character, such as claims for arrears of rent, should remain, *had* the effect of removing the goods from the ambit of the agreement.

The owner of the goods in such a case, though afforded protection as against the landlord's distress, suffers this inconvenience. He has only such rights to possession of his property as flow from the position at common law: he has no right to enter and retake possession; he can merely ask for delivery of the goods and if refused must fall back on the aid of the Court to give him possession in an action of detinue. In such an action the agreement of hiring under which the bailment was made would be irrelevant, save as a matter of history, the detainder being the gist of the action.

The writer of the article mentions *Rogers, Eungblut and Co.* v. *Martin*, following *Shenstone* v. *Freeman*. The position where the hire-purchase agreement is entered into with the tenant's spouse is now quite clear. The point which requires special note is that the landlord can evade this protection by requiring *both* the husband and his wife to become tenants.

The chief difficulty which appears to arise in considering this matter from the point of view of the trader is the framing of a hire-purchase agreement so as to meet the point mentioned in the concluding paragraph of the article—the resumption of possession where the landlord has already issued distress. If there has been no breach of the terms of the agreement, then the trader will probably first become aware of the arrears of rent when the landlord issues distress, and by that time it is too late for him to do anything, as the goods are already in the custody of the law. The only solution appears to be to provide that if the hirer shall be in arrear with his rent for (say) three days, then the agreement shall *ipso facto* for all purposes determine—a suggestion academical rather than practical.

Yours faithfully,

C. BARRATT.

Halifax.

September, 1932.

On Wednesday, October 12th, the President and members of the Incorporated Accountants' London and District Society will entertain to luncheon at the Connaught Rooms, Great Queen Street, Mr. E. Cassleton Elliott, F.S.A.A., President of the Society of Incorporated Accountants and Auditors. Mr. Richard A. Witty, F.S.A.A. will be in the chair, and the luncheon is timed for 1 p.m.

Obituary.

FREDERICK JOHN WARREN.

We regret to announce the death, on September 6th, of Mr. Frederick John Warren, M.B.E., J.P., F.S.A.A., of Haverfordwest. Mr. Warren had been a member of the Society since 1901, and a Fellow since 1903. At the time of his election he was Borough Accountant of Haverfordwest; this position he resigned in 1928, but continued in public practice until the date of his death. The distinction of M.B.E. was conferred upon him on January 1st, 1920, in recognition of his services as Honorary Secretary of the local War Savings and War Loans Committees. Mr. Warren was twice Mayor of Haverfordwest. He had been a member of the Governing Body of the Church in Wales and of St. David's Diocesan Conference and Finance Board. The funeral took place on September 9th, and a large attendance included several members of the Town Council and of the Pembrokeshire County Council.

District Societies of Incorporated Accountants.

LIVERPOOL.

Syllabus of Lectures, 1932-33.

1932.		
Oct.	4th.	Visit to Collieries of the Wigan Coal Corporation, Limited.
Oct.	6th.	"Recent Income Tax Cases," by Mr. Lawrence Bailey, A.S.A.A. (at the Queen Hotel, Chester).
Oct.	19th.	Students' Impromptu Speeches, for President's and Vice-President's Prizes.
Oct.	27th.	Joint Debate with Liverpool Chartered Accountants' Students' Association.
Nov.	17th.	"The Progress of Mechanical Bookkeeping," by Mr. C. Ralph Curtis, B.Sc. (Econ.), F.I.B., F.C.I.S.
Nov.	30th.	Annual Luncheon. *Guest:* Sir James Martin, J.P., F.S.A.A. (at 12.45 p.m. at the Exchange Hotel).
Dec.	5th.	Mock Company Liquidation Meeting. (Joint Meeting with Chartered Institute of Secretaries.)
Dec.	15th.	"The Etiquette of the Profession," by Mr. Thomas Keens, D.L., F.S.A.A. (Past President of the Society of Incorporated Accountants and Auditors).
Dec.	20th.	"The English Legal System," by Mr. Bertram B. Benas, B.A., LL.B., Barrister-at-Law.
1933.		
Jan.	11th.	"Some Common Mistakes in the Legal Subjects of the Examinations," by Mr. E. Westby-Nunn, B.A., LL.B., Barrister-at-Law.
Jan.	18th.	"Debentures and Sinking Funds," by Mr. H. A. R. J. Wilson, F.C.A., F.S.A.A.
Jan.	23rd.	"Bankruptcy," by Mr. James Allcorn, Official Receiver (at the Victoria Hotel, Southport).
Feb.	8th.	"Examination Hints on Company Accounts," by Mr. W. H. Grainger, F.S.A.A.

Feb.	21st.	"Intestacies," by Mr. Harold Brown, M.A., LL.B., Barrister-at-Law.
Mar.	1st.	Joint Debate with Liverpool Law Students' Association (at 5.30 p.m., at the Liverpool Law Library, 10, Cook Street).
Mar.	16th.	"The Death Duties," by Mr. Stanley A. Spofforth, A.S.A.A.
Mar.	30th.	"The Economic Outlook," by Mr. Douglas Haigh, F.C.I.S., General Secretary, National Industrial Alliance.

Meetings are held at 6.15 p.m., unless otherwise indicated, at the Constitutional Club, India Building, Water Street, Liverpool.

NORTH-WEST LANCASHIRE.

(BURNLEY AND DISTRICT STUDENTS' SECTION.)

Syllabus of Lectures, 1932-33.

1932.		
Oct.	14th.	"Incorporated Accountants' Examinations," by Mr. Richard A. Witty, F.S.A.A.
Nov.	10th.	Mock Shareholders' Meeting.
Dec.	8th.	"Municipal Debt—Its Creation and Redemption," by Mr. W. A. Walker, F.S.A.A. (Borough Treasurer of Burnley).
1933.		
Jan.	12th.	Reading and Debating by selected Candidates for Prize Essay. *Judging Committee:* Mr. J. W. Dean, A.S.A.A., Mr. P. F. Pierce, A.S.A.A., Mr. James Whittaker, A.S.A.A.
Feb.	9th.	"Some Aspects of Municipal Finance and Accounts," by Mr. John Campbell, F.S.A.A. (Borough Treasurer of Accrington).
Mar.	10th.	Mock Income Tax Appeal.

The meetings will be held at the Mechanics' Institution, Burnley, at 7.30 p.m. Members have the privilege of introducing friends who are interested.

CONDITIONS OF PRIZE ESSAY SCHEME.

The Committee propose two divisions, viz, (1) those who have not passed the Intermediate examination at the commencement of the Session, and (2) those who have. The prize to those in the first section shall be books to the value of £1 1s. (to be chosen by the successful candidate), and to those in the second section a subscription for two years to the *Incorporated Accountants' Journal* of the value of £1 5s.

The subject for the first section shall be "A Student's Impressions of the Professional Examinations of the Society of Incorporated Accountants, with Special Reference to Mr. Witty's Lecture," and the subject for the second section "The National Crisis of September, 1931, and the Progress Made of the Recovery to Date." The essay for the first section shall consist of approximately 2,000 words, and that for the second of about 3,000 words.

The Judging Committee will not award the prizes if in their opinion there is not a sufficient standard of merit.

Each essay shall bear a *nom-de-plume* and the age of the writer and the length of his professional service, and be accompanied by a sealed letter marked with the *nom-de-plume* and containing the name and address of the writer. Such letter shall not be opened except in the case of the successful essays, or at the request of the writer of the essay.

The essays must be lodged with the Secretary on or before Saturday, December 10th. Candidates whose work is outstanding will be required to read their essays and debate the points to obtain further marks at the meeting of members on Thursday, January 12th, 1933. Such candidates will be notified not later than December 31st. The Judging Committee will give their award not later than January 31st, 1933.

SOUTH WALES AND MONMOUTHSHIRE.

Syllabus of Lectures, 1932-33.

1932.		
Oct.	6th.	Opening Address, by Mr. Norman E. Lamb, F.S.A.A., at Cardiff.
Oct.	7th.	"Hints on Short Papers," by Mr. C. T. Stephens, F.S.A.A., and Mr. J. D. R. Jones, F.S.A.A., at Newport.
Oct.	25th.	"Problems of Building Society Finance and their Relationship to National Finance," by Sir Enoch Hill, at Cardiff. (Joint Lecture with Chartered Institute of Secretaries.)
Nov.	4th.	Short Paper by Student, Lecturette by Mr. T. H. Trump, A.S.A.A., at Newport.
Nov.	10th.	Internal Debate, at Cardiff.
Nov.	18th.	Internal Debate, at Newport.
Nov.	30th.	"Topical Problems in Local Government Finance," by Mr. F. J. Alban, C.B.E., F.S.A.A., at Bridgend. (Joint Lecture with Swansea and South-West Wales District Society and Chartered Institute of Secretaries.)
Dec.	2nd.	"Shipping Accounts," by Mr. W. J. Pallot, F.S.A.A., at Newport.
Dec.	14th.	"The Present Economic Outlook," by Mr. A. E. Pugh, F.S.A.A., F.I.S.A., F.C.I.S., F.R.Econ.S., at Cardiff.
Dec.	16th.	Short Paper by Student, Lecturette by Mr. Ivor Davies, A.S.A.A., at Newport.
1933.		
Jan.	13th.	Internal Debate, at Newport.
Jan.	26th.	Mock Meeting, at Cardiff.
Jan.	27th.	Short Paper by Student, Lecturette by Mr. A. Blackburn, A.S.A.A., at Newport.
Feb.	8th.	"Income Tax, with Special Reference to the Question of Domicile and Residence of Corporations," by Mr. A. Goldstein, LL.M. (H.M. Inspector of Taxes), at Newport.
Feb.	15th.	"Business Economics—Its Value to the Accountancy Student," by Mr. James Stephenson, M.A., M.Com., D.Sc., at Cardiff.
Feb.	24th.	Joint Debate (Cardiff and Newport Students), at Newport.
Mar.	9th.	"Retail Traders' Accounts," by Mr. John Ewart, A.S.A.A., at Cardiff.
Mar.	10th.	"Building Society Movement," by Mr. F. J. Notley, A.S.A.A., at Newport.
Mar.	16th.	Joint Lecture Cardiff and Newport Students, at Cardiff. Subject and Lecturer to be announced later.
Apr.	7th.	Short Paper by Student, Lecturette by Mr. W. J. Kimpton, A.S.A.A., at Newport.

The annual dinner will be held at the Whitehall Rooms, Park Hotel, Cardiff, at a date in March, 1933, to be announced later.

CARDIFF STUDENTS.

Meetings in connection with the Cardiff Students' Prize Essay Scheme will be held on October 20th, November 17th, December 8th, 1932, January 12th, February 2nd, and March 2nd, 1933.

NEWPORT STUDENTS.

Meetings in connection with the Newport Students' Prize Essay Scheme will be held on October 21st, November 4th, December 16th, 1932, January 27th, February 10th, March 24th and April 7th, 1933.

YORKSHIRE.

Syllabus of Lectures, 1932-33.

1932.		
Sept.	28th.	"Salesmanship as a Function of Management," by Sir Francis Goodenough, C.B.E., *Chairman:* Mr. William Walker, F.S.A.A. (Past President).
Oct.	11th.	"Income Tax," by Mr. Cecil A. Newport, F.R.C.A. *Chairman:* Mr. Alfred Walton, F.S.A.A., F.C.A. (Past President).
Oct.	25th.	Joint Meeting with the Bradford and District Society of Incorporated Accountants. "Mock Arbitration re Disputed Accountants' Charges," at 7.30 p.m. *Chairman:* Mr. William Gaunt, F.S.A.A.
Nov.	8th.	"Partnership," by Mr. John H. Bromley, Solicitor. *Chairman:* Mr. H. Threlfall, A.S.A.A.
Nov.	15th.	"Income Tax," by Mr. Rupert Walton, A.C.A., at the Y.M.C.A., John William Street, Huddersfield. *Chairman:* Mr. T. N. Steel, F.S.A.A.
Dec.	1st.	"The Accountant and Industry," by Mr. E. Cassleton Elliott, F.S.A.A., President of the Society of Incorporated Accountants and Auditors. *Chairman:* Mr. Frederick Holliday, F.S.A.A. (Past President; Member of the Council).
1933.		
Jan.	17th.	"Bankruptcy," by Mr. C. Allison Sales, F.S.A.A., LL.B. *Chairman:* Mr. William Tate, F.S.A.A. (Past President).
Jan.	31st.	"A Safe Pass in Economics," by Mr. Ronald F. Adgie, M.A., A.C.A. *Chairman:* Mr. Arthur France, F.S.A.A. (Past President).
Feb.	14th.	"Insurance Accounts," by Mr. Wilfred H. Grainger, F.S.A.A. *Chairman:* Mr. Tom Revell, F.S.A.A. (President).
Feb.	24th.	"Company Law," by Mr. C. Allison Sales, F.S.A.A., LL.B., at the Y.M.C.A., John William Street, Huddersfield. *Chairman:* Mr. T. R. Ineson, A.S.A.A.
Feb.	28th.	"Inspectors and Accounts," by Mr. Ronald Staples (Editor of *Taxation*). *Chairman:* Mr. George Astle, A.S.A.A.
Mar.	14th.	Joint Meeting with the Chartered Institute of Secretaries (West Yorkshire Branch). (Subject later.) *Chairman:* Mr. Frank Harrison, F.S.A.A.
Mar.	28th.	"Points Arising in General Practice," by Mr. H. A. Perkis, A.S.A.A., A.C.A. *Chairman:* Mr. Oswald Coope, A.S.A.A.

All lectures are held at the Hotel Metropole, King Street, Leeds, at 6.30 p.m., unless otherwise stated.

Dr. E. Leslie Burgin, M.P., will deliver a lecture to the Institute of Arbitrators at the Queen's Hotel, Birmingham, on Wednesday, October 19th, his subject being "Arbitration in relation to Business and Commerce." The meeting will commence at 5 p.m.

Professional Appointments.

Mr. William Forsyth, A.S.A.A., City Treasurer's Department, Carlisle, has been appointed Borough Accountant of Conway.

Mr. A. S. Hillyard, A.S.A.A., has been appointed Borough Treasurer of Bournemouth on the retirement of Mr. C. R. Haley.

Mr. Harold Warwick, A.S.A.A., Deputy Borough Treasurer, Blackpool, has been appointed City Treasurer of Wakefield.

New Chief Inspector of Taxes.

Mr. Ernest Arthur Eborall, who has been Deputy Chief Inspector of Taxes, has now been appointed to the senior position upon the retirement from the public service of Sir Edward Richard Harrison. Mr. Eborall was a member of the Inter-Departmental Committee on Income Tax in the Colonies, and Secretary of the Shipping Taxation Commiteee of the Imperial Economic Conference.

Scottish Notes.

(FROM OUR CORRESPONDENT.)

Executorship Accounts.

The lecture given by Mr. J. Stewart Seggie, F.S.A.A., President of the Scottish Branch, to the Glasgow Incorporated Accountants' Students' Society, has been reprinted from the *Journal*, and copies can be had by application to the Secretary of the Scottish Branch, 78, St. Vincent Street, Glasgow. The lecture was specially prepared for candidates for the Society's examinations, and is a clear exposition of the subject, and explains some points of difference between the English and Scottish law and practice.

Incorporated Accountants' Golf Club.

The final matches for the Dunlop Cup have been played, and the winner this year is Mr. Ian Hewat, Glasgow. The runner-up for the second year in succession was Mr. Mungo Campbell, A.S.A.A., Glasgow.

In the "knock-out" competition, Mr. H. McKechnie, Kilmarnock, beat Mr. Ian Hewat, and Mr. Mungo Campbell, Glasgow, beat Mr. J. C. McMurray, F.S.A.A., Kilmarnock. The final match between Mr. McKechnie and Mr. Campbell will be played on an early date.

Scottish Education Accounts.

The fifty-ninth annual report by the Accountant in Edinburgh to the Scottish Education Department has just been published. The present accountant, Mr. J. A. Thomson, is well known to Incorporated Accountants in Edinburgh and Glasgow. He succeeded Mr. A. D. Kerr, who retired last year owing to ill-health. The accounts set forth the amounts of receipts and expenditure of each authority for the year 1930-31.

The total receipts from all sources for that year amounted to £7,034,568, made up as follows:—

Grants from the Scottish Education Department	£6,812,443
School fees	174,226
Endowments	25,136
Income from other sources	22,763
	£7,034,568

The total expenditure amounted to £12,877,105, made up as follows :—

Administration expenses	£410,164
Salaries of and retiring allowances to teachers	8,342,733
Contributions to Teachers' Superannuation Scheme	394,060
Maintenance expenses of schools and continuation classes	1,905,817
Play centres under Authorities' management	1,666
Assistance under sect. 4, Act of 1918	253,996
Nursery Schools, sect. 8, Act of 1918	1,646
Contributions under sect. 9, Act of 1918	168,878
Contributions under sect. 10, Act of 1918	1,811
Medical examination and treatment	176,397
Meals and clothing	109,104
Conveyance and maintenance of special children	112,438
Reformatory and Industrial Schools	41,576
Repayment of loans, including payments into sinking fund	386,990
Interest on sanctioned loans	363,080
Revenue contributions towards capital expenditure	78,686
Other expenditure	128,063
Total Revenue Expenditure	£12,877,105

Salaries, &c., absorbed 64.79 per cent., and maintenance 14.80 per cent. of the total expenditure.

In the last Report comment was made on the increase of more than £400,000 of revenue expenditure as compared with the year 1928-29. A further increase of £400,000 as compared with 1929-30 has to be recorded. It is interesting to note, in view of the appointment by the Government of the Special Committee to consider economies in local administration, that of this increase in 1930-31, £300,000 is in respect of salaries of teachers.

Notes on Legal Cases.

[The abbreviations at the end of each of the cases refer to the following law reports, where full reports of the case may be found. The Law Reports and other reports are cited with the year and the Division, *e.g.* (1925) 2 K.B. :—

T.L.R., *Times Law Reports ; The Times, The Times* Newspaper ; L.J., *Law Journal ;* L.J.N., *Law Journal* Newspaper ; L.T., *Law Times ;* L.T.N., *Law Times* Newspaper ; S.J., *Solicitors' Journal ;* W.N., *Weekly Notes ;* S.C., *Session Cases (Scotland) ;* S.L.T., *Scots Law Times ;* I.L.T., *Irish Law Times ;* J.P., *Justice of the Peace (England) ;* L.G.R., *Knight's Local Government Reports ;* B.&C.R., *Bankruptcy and Company Cases.*

The other abbreviations used in modern reports are H.L., House of Lords ; A.C., Appeal Court (House of Lords and Privy Council) ; C.A., Court of Appeal ; Ch., Chancery Division ; K.B., King's Bench Division ; P., Probate, Divorce and Admiralty Division ; C.S., Court of Session (Scotland) ; J., Mr. Justice (King's Bench or Chancery) ; L.J., Lord Justice ; L.C., Lord Chancellor ; M.R., Master of the Rolls ; N.I., Northern Ireland ; P., President of Probate, Divorce and Admiralty.]

COMPANY LAW.

Broken Hill Proprietary Company, Limited, v. Latham.

Redemption of Interest on Debentures.

Maugham (J.) held that the redemption of and payment of interest on debentures payable in London by an Australian company, where the debenture holders had an option to require payment in Australia or in London, should, if the option to require payment in London was exercised, be paid in sterling without deduction on account of the exchange value of the pound in Australia.

(Ch. ; (1932) 48 T.L.R., 630.)

In re William C. Leitch Brothers Limited.

Fraud by Director.

By sect. 275 of the Companies Act, 1929, if in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court may, if it thinks proper so to do, declare that any of the directors, whether past or present, who were knowingly parties to the carrying on of the business in such manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company. Where the declaration is made in the case of a winding up in England, it is to be deemed to be a final judgment within the meaning of sect. 1 (1) (*g*) of the Bankruptcy Act, 1914.

Maugham (J.) held (1) that the declaration should state the amount for which the director is liable ; (2) that a company carrying on business and incurring debts when to the knowledge of the directors there is no reasonable prospect of the debts being paid may, in general, be properly inferred to be carrying on business "with intent to defraud creditors" within the meaning of sect. 275.

(Ch. ; (1932) 2 Ch., 71.)

REVENUE.

In re Cockell ; Jackson v. Attorney-General.

Preferential Payment of Income Tax.

A testator died insolvent and owing a considerable sum to the Crown for arrears of taxes. The Crown alleged that eight years' arrears of income tax and two years' arrears of super tax remained unpaid, and, in view of the insolvency of the testator's estate, claimed to be a preferential creditor under sect. 33 of the Bankruptcy Act, 1914, in respect of the assessment for the year 1920-1921, being the largest assessment during the said eight years for income tax and super tax.

It was held that the preferential claim of the Crown for property or income tax can be made for any one year ending on any April 5th before the testator's death.

(Ch. ; (1932) W.N., 172.)

Thomas Merthyr Colliery Company, Limited, v. Davis.

Allowable Deductions.

The appellants, a colliery company, were subscribing members of a coalowners' association, which had been formed, *inter alia*, to indemnify its members against deficiency and stoppage of output by reason of strikes. Part of these contributions was applied by the association as a contribution to the Conciliation Board, and part was contributed to the funds of the Mining Association of Great Britain, which in some matters looked after the interests of coalowners. The appellants claimed that their subscriptions to the association were proper deductions in arriving at their profits.

It was held by the Court of Appeal, in affirming the decision of Finlay (J.) (see *Incorporated Accountants' Journal*, September, 1932, p. 468), that the appellants were not entitled to deduct that part of their subscriptions which was applied towards an indemnity against loss of output by reason of strikes and to the funds of the Mining Association, but that they were entitled to deduct the part which was applied as a contribution to the Conciliation Board.

(C.A. ; (1932) 48 T.L.R., 633.)